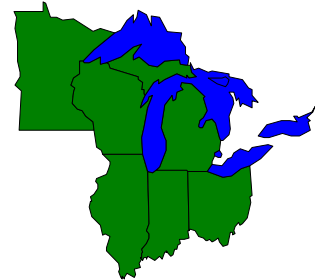




Architect and Engineer Scope
and Fees Request
**U.S. GENERAL SERVICES
ADMINISTRATION**
Property Development Division
230 South Dearborn Street, Suite 3600
Chicago, IL 60604



PROJECT:

Regionwide Architect and Engineer Indefinite Delivery
Indefinite Quantity (IDIQ) Contract

Various Locations in the States of Illinois, Indiana,
Ohio, Michigan, Minnesota and Wisconsin

SOLICITATION NO:

GS-05P-08-GBD-0017

ISSUE DATE:

December 24, 2008

DUE DATE & TIME:

January 14, 2009
2:00 PM (Central Time)

CONTRACT NO:

DATE OF AWARD:

ISSUED BY:

U.S. General Services Administration
Public Buildings Service
Property Development Division
230 South Dearborn Street, Suite 3600
Chicago, IL 60604

**CONTRACTUAL PERFORMANCE REQUIREMENTS
FOR
INDEFINITE QUANTITY ARCHITECT-ENGINEER CONTRACTS**

Revised: July 2, 2008

1. SCOPE OF CONTRACT

This is an indefinite-quantity contract to provide professional Architect-Engineer services for renovation projects within existing federally owned properties. Typical work may include the renovation and restoration of existing office and public spaces and replacement and/or upgrade of typical building systems such as roofs, windows, exterior restoration, heating, cooling, electrical, fire alarm, EMS, etc. Many of the projects will be in historically significant buildings which may contain hazardous materials including but not limited to asbestos containing materials and lead based paint. The projects will range in value from an estimated construction cost of \$10,000 to the prospectus limitation, approximately \$2,300,000. The Architect-Engineer will be expected to handle several projects simultaneously, without compromising timeliness and quality of service to GSA. This indefinite-quantity contract may also be used to provide Architect-Engineer services for new construction or renovation of GSA leasehold interests as well.

2. CONTRACT TERM

The base period of the contract shall be for a period of one year. The Government shall have the unilateral option of extending the term of the contract for up to 4 consecutive periods of 12 months each. Performance will be evaluated yearly and will be one of the factors considered when determining whether to exercise the next option year.

3. TYPES OF ARCHITECT-ENGINEER SERVICES

The primary types of professional services the A-E shall provide include architectural, mechanical, electrical, scheduling, estimating and construction management. Other professional disciplines may be involved depending on the scope of any given project and shall also be provided by the A-E either through in-house staff or the hiring of consultants. These may include, but are not limited to, historic preservation, structural, fire protection, life-safety, environmental, art conservation, interior design, space planning, civil, survey and soil boring, geotechnical testing, surveying (boundary & topographical), conceptual site planning, acoustics, energy and water conservation, traffic engineering, security and any other specialty consultant deemed necessary to design a complete project.

The primary product produced by the A-E will be a set of construction documents. These include drawings, specifications, cost estimate, life cycle cost analysis, phasing plan and construction schedule as necessary to satisfy individual work orders. The A-E may also be tasked to perform site investigations, reports, evaluations, life cycle cost analysis, planning, programming, site surveys, design concepts, tentative design, working drawings and specifications, shop drawing review, materials and related document review, and construction inspection/observation services. The type of services required for each project will be delineated in each work order.

4. POST AWARD CONFERENCE

Prior to the issuance of the first work order against the contract the Architect-Engineer shall attend a Post Award Conference in Chicago, IL. Both the Architectural and Engineering disciplines shall be present at this meeting. This meeting is intended to provide the A-E an opportunity to informally present their qualifications and key personnel to the Government officials who will be placing orders against the contract. Typical Government procedures and paperwork will also be discussed and the A-E will be given an opportunity to ask any specific questions they may have. This conference shall be at no additional cost to the Government.

5. FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)

- (a) This is an indefinite-quantity contract for the supplies or services specified and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after one year.

6. MINIMUM GUARANTEE

For the base year and each option year exercised by the Government, the Government shall order supplies and services under this contract with a value of at least \$2,500. If the contract is terminated, for reasons other than default, during the base year or any option year, the minimum guarantee shall be prorated based on the number of calendar days the contract was in effect.

7. FAR 52.216-19 ORDER LIMITATIONS (OCT 1995)

- (a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$500, the Government is not obligated to purchase, nor is the Architect-Engineer obligated to furnish, those supplies or services under the contract.
- (b) *Maximum order.* The Architect-Engineer is not obligated to honor—
 - 1) Any order for a single item in excess of \$2,000,000;
 - 2) Any order for a combination of items in excess of \$2,000,000;
 - 3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.
- (c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.
- (d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 7 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.?

8. ORDERING

- (a) Each order against this contract will be made using a Work Order issued by the Contracting Officer. No other GSA or Federal employees have the authority to issue work orders under this contract. Each work order will delineate the project scope and delivery terms and include, at a minimum, a scope of services, a scope of work, scheduled delivery dates and fee and payment terms. Work orders under this contract may be issued by the Contracting Officer at any time within the one-year base period or option periods of this contract, provided that the maximum contract amount for any one-year period is not exceeded.
- (b) The Contracting Officer will issue work orders for projects with an Estimated Construction Cost at Award (ECCA) up to \$2,000,000, using the Supplemental Architect-Engineer Contract Lookup Table (Appendix A). Work Orders for projects with an ECCA in excess of \$2,000,000 and for services not included in the Lookup Table (see paragraph (c)) will be negotiated separately. The Lookup Table provides a different fee schedule for each of three project types: simplistic, average, and complex. Where a bilateral or mutual agreement cannot be reached, the Contracting Officer will make a determination as to the application of the project type to an individual work order.
- (c) The Architect-Engineer shall submit a proposal for performing the services delineated in the work order within one week of receiving a Request for Proposal (RFP). The Architect-Engineer shall complete GSA Form 2630 – Architect-Engineer Cost Estimate, GSA Form 2631 – Architect-Engineer Cost Estimate Summary and other forms that may be indicated by the Government. Proposals submitted for those projects exceeding the maximum dollar provided in the lookup table or for services not covered by the lookup table shall be detailed by discipline and man-hour on GSA Form 2630. Such services not covered include, but are not limited to, services associated with feasibility studies, field measurements, existing facility surveys, travel, and construction inspection/observation.
- (d) If agreement is reached on the services to be performed, the fee, and time for completing the work, a Work Order will be executed by issuance of a GSA Form 300 – Order for Supplies or Services.
- (e) Work Orders for Design Services will include an option for Post Construction Contract Award Services. These are services provided by the Architect-Engineer during the construction phase of a project. The Contracting Officer will exercise this option by issuance of a separate Standard Form 30.
- (f) Work Orders for Design Services may also include an option for Record Documents. These services include translating “As-Built” notations made by the construction contractor on to the original design AutoCAD and WORD documents. The Contracting Officer will exercise this option by issuance of a separate Standard Form 30.
- (g) The Contracting Officer may issue a separate Work Order for preliminary investigation, cost estimating, or study services pending final negotiation of a Work Order for design services. At the option of the Contracting Officer, these Work Orders may be issued on a cost basis, not-to-exceed a stated dollar amount, consistent with FAR Subpart 16.3. However, these Work Orders must be superseded by a definitive Work Order or terminated after 30 calendar days.

9. UNREASONABLE FAILURE TO AGREE

If, in the opinion of the Contracting Officer, the Architect-Engineer has unreasonably failed to agree during negotiations to the level of effort, price, or other terms or conditions for Work Orders, the Government may terminate the contract under FAR clause 52.249-7, Termination (Fixed-Price Architect-Engineer) (APR 1984).

10. SUBMISSIONS

- (a) Each Work Order will establish a schedule for submissions. Failure by the Architect-Engineer to diligently prosecute their work to successfully meet the required delivery dates may be grounds for the contract termination under FAR Clause 52.249-7, Termination (Fixed-Price Architect-Engineer)(APR 1984).

- (b) The completion dates may be extended if performance is delayed due to causes beyond the control and without the fault or negligence of the Architect-Engineer as determined by the Contracting Officer.

11. KEY PERSONNEL

The Architect-Engineer shall employ the professional personnel identified in section E of Part I of the Standard Form 330, Architect-Engineer Qualifications, to perform the services required under this contract. Substitutions, additions or changes in classification of personnel must be submitted to the Contracting Officer for approval. No changes will be allowed without written approval of the contracting officer.

12. SECURITY REGULATIONS

- (a) To comply with the U.S. Department of Justice Vulnerability Assessment of June 28, 1995, GSA requires a pre-employment check on all long term PBS service contract employees. Any contractor employees requiring access to Federal property shall undergo a pre-employment criminal history check and wanted person check prior to being employed under the contract and/or granted access to GSA-controlled buildings.
- (b) The background checks consist of:
 - 1) Inquiries utilizing the National Crime Information Center (NCIC), based on name, numeric identifier (birth date, Social Security Number, etc.), race, and gender, to determine the existence of a criminal record.
 - 2) Inquiries into the Interstate Identification Index (III), based on name and date of birth, from the State of Residence will be performed by DHS/FPS or by the occupying agency.
 - 3) Inquiries into wanted person files.
- (c) Appropriate forms will be provided by the Contracting Officer (CO) at the time of contract award. The Architect-Engineer shall complete forms for all personnel they are planning to utilize on this contract. The Architect-Engineer will submit the completed forms to the Service Center office as directed by the Contracting Officer. The forms will be processed by GSA and the Department of Homeland Security, Federal Protective Service (DHS-FPS). Approved clearances will be valid for five years. The following forms will be required for each individual.
 - 1) Two "Fingerprinting Charts" (Form FD-258). The fingerprinting process will be conducted by GSA, but it is the responsibility of the Contractor to schedule for completion of same.
 - 2) One "Statement of Personal History" (GSA Form 176).
 - 3) One "Contract Employees Security Clearance Information Sheet".
- (d) The Architect-Engineer will be notified by letter of each employee's security clearance status within 60 days of submitting the employee's forms.
- (e) Determination for suitability for working in a Federal facility will be made in accordance with the Office of Personnel Management's FPM Supplement 731-1, "Determining Suitability for Federal Employment" and guidelines from GSA's Office of Audit Resolution and Internal Controls. These criteria for adjudication have been approved by the GSA General Counsel. The criteria will be used by trained regional and/or national office personnel security specialists, to determine the eligibility of prospective Architect-Engineer employees. The Government shall have and exercise full and complete control over granting, denying, withholding, and terminating clearances for any employee.
- (f) Occupant agencies may require the Architect-Engineer's employees to obtain additional security clearances for access to certain areas covered under this contract. The CO will inform the Architect-Engineer when such clearances are required.
- (g) The Government will issue a site-specific identification badge to each cleared employee. The badge must be worn so as to be clearly visible at all times when on the work site. The badge

will be retained by the individual as long as he/she requires continued admittance to the site, and the Architect-Engineer will arrange for its immediate return to the Government when such need ceases.

- (h) Temporary or visitor badges will be provided for persons who are identified as having an infrequent or temporary legitimate business need for access to the site. Employees having temporary or visitor badges must be escorted at all times by a cleared Architect-Engineer employee.
- (i) The Architect-Engineer shall notify the Contracting Officer in writing when personnel are no longer employed by the Architect-Engineer or a subcontractor. Individual's name, social security number and date of birth shall be included. The individual's badge shall be returned to the Government.

13. FEES FOR CONTRACT SERVICES

- (a) The fee for Work Orders on projects with an ECCA of up to \$2,000,000 shall be determined by the supplemental Architect-Engineer Contract Lookup Table (Appendix A), subject to an additional fee for services not included in the Lookup Table as provided in the Ordering clause of the contract.
- (b) For negotiated fees for Work Orders on projects with an ECCA in excess of \$2,000,000 and for additional services not included in Lookup Table, as provided in the Ordering clause of the contract, the following rates will apply:
 - 1) Total Overhead Rate: TBD%
 - 2) Profit: TBD%
 - 3) Direct Salary Rates: Appendix B
- (c) Option periods: Direct salary rates may be adjusted for option renewal periods, but shall not exceed the percentage change in the Consumer Price Index during the prior twelve months of the contract. The Index that will be used for any adjustment is the CPI-U for *(The CO shall select and specify the CPI-U that will provide the most meaningful index)*. Overhead and profit rates will not be subject to adjustment.
- (d) Travel: Travel required to be performed in connection with a Work Order will be included in the detailed cost breakdown on GSA Form 2630 and will be negotiated separately. Travel costs shall not exceed allowable costs provided in FAR 31.205-46 Travel Costs, and Federal Travel Regulations.

14. PAYMENT

Payment under this contract will be in accordance with FAR 52-232-10 Payments Under Fixed-Price Architect-Engineer Contracts (Aug 1987). However, for the purposes of this contract the term "Work Order" shall be substituted for "contract" and for "Statement of Architect-Engineer Services".

15. RESTRICTION ON ADVERTISING, MARKETING AND CONTRACT SITE ACCESS

In accordance with GSAR 552.203-71, Restriction on Advertising, the Architect-Engineer is precluded from referring to GSA contracts in commercial advertising in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The A-E may not disseminate any information concerning this project/contract without prior written approval of the Contracting Officer. The A-E may not photograph the project site other than as required by the contract or as directed by the Contracting Officer.

Access to Federally controlled space is governed by stringent security requirements. The A-E is prohibited from bringing individuals to the project/contract site for the purpose of marketing, self promotion, media tours, and any other event or activity without the express written consent of the

Contracting Officer. All media inquiries should be directed to the Contracting Officer. Any request for access to the project/contract site, other than to perform work related to the contract, shall be made in writing to the Contracting Officer. Failure to conform to this prohibition will be reflected in the CPS evaluation and may be cause for not exercising contract options.

16. GENERAL REQUIREMENTS

- (a) The Architect-Engineer shall provide their professional expertise and recommendations and provide GSA with state of the art design solutions. The Architect-Engineer shall consider new and cutting edge solutions while simultaneously balancing innovation against proven performance while evaluating life cycle cost impact. The Architect-Engineer shall provide complete design solutions for each work order.
- (b) The A-E shall attend a pre-design meeting with the GSA project manager, GSA building manager, tenants and others on an individual work order basis. The pre-design meeting shall be held at the project site. The A-E shall utilize this opportunity to become familiar with the project site and unique project requires. The A-E and GSA project team shall review the Work Order's scope of work for accuracy and completeness and shall review and agree to the project's Estimated Construction Cost. The A-E shall notify the Contracting Officer of any ambiguities or discrepancies he/she finds in the project requirements that cannot be agreed upon with the project manager.
- (c) The A-E shall prepare the documents necessary to satisfy the requirements of each individual work order. These may include, but are not limited to, studies, surveys, building evaluations, concepts, tentatives, construction drawings and specifications. For phased projects, the A/E shall prepare a phasing plan which identifies all tenant moves and the time required for each move and each phase of the project. For each project, the A/E shall prepare a construction schedule showing the time necessary to complete each category of work, the impact of overtime or shift work, the tenant moves identified in the phasing plan and an overall duration to complete the project. The A-E shall follow industry standards and exercise their professional judgment and create any drawings or documents necessary for a complete project regardless of whether they were specifically identified in the work order.
- (d) The A-E shall coordinate the work performed in their office with other projects either in design or construction for the subject project. They shall coordinate their work with the work of the GSA Property Management staff. The A-E shall confer and coordinate with State and Local Government agencies as required to provide GSA with a complete design project.
- (e) The A-E may be required to visit project sites, the GSA Service Center in Springfield or the Regional office in Chicago, IL for conferences, meetings, design presentations, discussions etc. In addition, GSA representatives may visit the A/E's office for such meetings and drawing reviews.
- (f) The Government will furnish the Architect-Engineer with GSA and Client manuals and Design Guides. Where the A-E is unable to download these guides from GSA/Government websites, the Contracting Officer will provide the documents. GSA will furnish all required Government forms in electronic format, including the GSA Form 2630 – Architect-Engineer Cost Estimate and GSA Form 2631 – Architect-Engineer Cost Estimate Summary.
- (g) The Government will perform an Owner's Review of A-E prepared documents to ensure that established functional, aesthetic and spatial requirements of the project are satisfied. The A/E is solely responsible for the engineering, design accuracy, coordination of subcontractors, coordination of drawings and specifications and for providing a complete and accurate cost estimate such that the project can be constructed on schedule and within budget.
- (h) Post Construction Contract Award Services include the following:
 - 1) Check and approve or reject shop drawings, equipment lists, and data, applicable to the Architect-Engineer's part of the design work, during the construction period.

- 2) Prepare any additional explanatory drawings required, for the Architect-Engineer's part of the design, during the construction period.
 - 3) Review and approve Operations and Maintenance manuals prepared by the Contractor.
- (i) Record Documents

The Construction Contractor is required to maintain, at the job-site, a current set of working drawings and specifications which they mark up on a regular basis, to indicate all actual changes (including revisions, deviations and additions) to the original construction contract documents. Upon completion of construction, the Construction Contractor will deliver the marked up set of construction contract documents to the office of the Architect-Engineer. The Architect-Engineer shall question any changes, which are not consistent with his/her knowledge of the project. The Architect-Engineer shall then transcribe all Construction Contractor indicated changes onto a revised electronic set of the project AutoCAD drawings and also revise the specifications in the Microsoft WORD document. On each Drawing and specification Volume, the Architect-Engineer shall stamp the term "RECORD DOCUMENTS", the date revised and the signature of the A-E professional responsible. The Architect-Engineer shall deliver the Record Documents on a CD-ROM along with one (1) set of plotted reproducible mylar drawings and one paper set of contract specifications, to the Contracting Officer with a dated transmittal statement bearing the signature and seal of the Architect-Engineer. The statement shall read:

"To the best of my knowledge, information and belief, the Record Documents transmitted accurately reflect the constructed conditions as reported by the Construction Contractor." (*List all drawing numbers, specification volumes, sections and pages*).

17. FIRE PROTECTION ENGINEERING SERVICE REQUIREMENTS

- (a) The Architect-Engineer shall employ the services of a fire protection engineer for the following project types:
- 1) All new construction projects.
 - 2) All fire sprinkler and fire alarm installation projects.
 - 3) All projects in existing buildings where the fire protection and life safety portion of the project exceeds \$200,000 in estimated construction cost.
 - 4) All other projects when specified by the work order.
- (b) The fire protection engineer shall be a full participant for the entire design and construction process for the project and shall perform the following functions:

Design Services: The fire protection engineer shall perform the design of all fire protection systems including but not limited to: automatic suppression system(s), automatic fire detection & alarm systems(s), standpipe systems, fire pumps, special hazard protection systems, smoke control system(s), egress system(s), etc. for all working construction drawing submissions for the project.

Construction Period Services: The fire protection engineer shall review all shop drawings, hydraulic calculations, change orders, value-engineering proposals, and all technical data submitted by the Construction Contractor for the noted fire protection systems and any other submissions related to fire protection and life safety. The fire protection engineer shall witness acceptance tests of all fire protection systems and equipment for the project.

Submission of Project Documentation for Review: Project design documents, construction documents and submittals submitted for review to the GSA Regional Fire Protection & Safety Branch shall bear the seal/signature of the contracted fire protection engineer. Subsequent correspondence from the GSA Regional Fire Protection & Safety Branch shall be addressed in

a specific point by point written reply by the A-E firm and the fire protection engineer for the project indicating the method(s) to be employed to resolve identified deficiencies.

- (c) Qualifications: 41 CFR 101-6.603 Defines a fire protection engineer as an individual with a knowledge and understanding of fire dynamics meeting one of the following criteria:
- 1) An engineer having a Bachelor of Science or a Master of Science Degree in Fire Protection Engineering from an accredited university engineering program, plus a minimum of two- (2) years work experience in fire protection engineering.
 - 2) A professional engineer (P.E.) registered in Fire Protection Engineering, or
 - 3) A professional engineer (P.E.) registered in a related engineering discipline and holding Member grade status in the International Society of Fire Protection Engineers.

18. PERFORMANCE REQUIREMENTS

(a) Design Standards

The Facilities Standards for the Public Buildings Service (PBS P-100) establishes design standards and criteria to be followed for all projects. This document contains policy and technical criteria to be used in the programming, design and documentation of GSA buildings. The Facilities Standards is a building standard and not a guideline, textbook or training manual. It shall be used in conjunction with the specific building or project program including all client design requirements. The Architect-Engineer shall exercise technical competence and professional expertise to apply the requirements of the Facilities Standards to specific projects and develop fully integrated solutions such that the operation of the facility, energy usage and other criteria may be maximized.

(b) Client Design Standards

In addition to the Facilities Standards, individual Federal agencies have developed design guidelines which convey their unique requirements. The U.S. Courts Design Guide and the three-volume, Requirements and Specifications for Special Purpose and Support Space Manual for the U.S. Marshals Service are two examples. The A-E is responsible for satisfying agency requirements and integrating them into the design solution. The A-E will certify compliance with all client requirements prior to submitting their work to GSA. Any deviations to client design standards must be approved in writing by the client and concurred upon by the Contracting Officer. Undocumented deviations will be noted in the A-E's annual performance appraisal and may be cause for not exercising contract options.

(c) Building Design Standards (Building Profile)

In addition to these published Standards, GSA may have a design profile for individual buildings. These profiles convey the typical building materials, aesthetic attributes and design elements that define the vocabulary of the building. The A-E makes design decisions and satisfies client requirements within the context of the building profile. This ensures the architectural integrity of the original designer's intent while extending the life of the asset.

(d) National Historic Preservation Act (NHPA)

It is GSA's policy, whenever possible, to minimize the impact of projects on significant historic materials and spaces. For projects where significant historic materials may be affected, the A-E firm will be required to retain the services of a Preservation Architect either in-house or through a consultant. For designated projects, the Preservation Architect must be involved in analysis and design of all alternatives leading up to decisions affecting restoration and rehabilitation zones of the property as defined in the Historic Building Preservation Plan (HBPP) or the Historic Structures Report (HSR). The Preservation Architect serves as the A-E

team's liaison to GSA's Regional Historic Preservation Staff. GSA's activity in historic buildings is governed by Section 106 of the NHPA.

- 1) The minimum professional qualifications for a Preservation Architect are a degree in architecture; a license to practice architecture; at least one year of graduate study in architectural preservation, American architectural history, or preservation planning, and at least one year of full-time professional experience on preservation and restoration projects; or at least two years of full-time professional experience on preservation and restoration projects, which must include detailed investigations of historic structures, preparation of historic structure research projects, and preparation of construction documents for preservation projects.
- 2) Determination of the need for a Preservation Architect will be made by GSA and conveyed in the work order.

(e) Quality Control

As part of this contract the A-E is solely responsible for Quality Control on all documents created for GSA. This includes but is not limited to drawings, specifications, estimates, calculations, studies, etc. Where the A-E hires consultants to perform a portion of the work the A-E shall coordinate their work into the complete set of construction documents. The A-E shall perform quality control and coordination reviews on the integrated set of construction documents prior to submission to GSA. The A-E shall verify that all GSA and client design standards and building profile requirements have been met. The A-E shall deliver to GSA a fully completed set of construction documents, including an accurate and complete cost estimate, ready for procurement with no technical or coordination review performed by the Government. The A-E shall place the seal, date and signature of the responsible design professional on each sheet of the construction documents and the cover pages of the specifications and calculations. The seal shall be evidence that the A-E has performed quality control and that the documents are ready for bidding.

(f) Cost Management

The Architect-Engineer shall design each project in accordance with FAR part 52.236-22, Design Within Funding Limitations.

As part of this contract, the A/E shall prepare an independent cost estimate for each project. The estimate must accurately reflect current material and labor costs and include any adjustments to account for local market conditions. The estimate shall include any costs for overtime and shift work and identify any additional costs due to project phasing. The estimate shall be accurate and complete and any work of consultants shall be coordinated by the A-E into one single estimate for the project. Where options, alternates or unit prices are a part of the contract, the A-E shall break out these costs and show them independently as separate line items with the total project cost identified on a summary sheet. Where variations occur between the A-E's estimate and the range of proposals received by GSA, the A-E shall thoroughly review their estimate and identify and reconcile any variances. If, in their professional judgment, revisions to their cost estimate are required to accurately reflect the contract work, they shall make such revisions at no additional cost to the Government and within one week of the Contracting Officer's request. The goal of this reconciliation is to guarantee an accurate independent cost estimate for the government's use in awarding a construction contract.

The A/E shall prepare project estimates following the CSI format and broken down by labor and materials. Material quantities are to be priced by trades with backup calculations and unit costs identified with specific items of material to be placed or work operation to be performed. All markups (overhead, profit, general conditions, etc.) shall be identified and quantified.

All estimates shall be prepared using the most current version of the GSA Cost Estimating Workbook (CEW) format unless specifically stated otherwise in individual work orders. The

CEW is a CSI based estimating format and will be updated periodically by GSA and provided to the A/E firm. The A/E shall utilize the most up-to-date CEW at the time of award of the design work order. Where UNIFORMAT is specified in the work order, the A/E shall prepare a UNIFORMAT estimate in accordance with the requirements of the PBS P120, Project Estimating Requirements for the Public Buildings Service, January 2007.

Where a project involves work within tenant spaces, the estimate shall additionally be broken down into "Shell" and "Tenant Improvement (TI)" subtotals. Shell and TI items shall be clearly separated and identified. Shell and TI items are defined in Paragraphs 2.2 and 2.3 of the third edition of the GSA Pricing Policy dated 3/15/02. If revised, the A/E shall be required to utilize the latest edition. GSA shall notify the A/E of any revisions.

(g) On-Time performance

The A/E shall deliver 100% complete construction documents to the GSA within the time specified in the individual work orders. Where the A/E anticipates they cannot complete the work within the specified time period, they shall notify the GSA project manager prior to signing the individual work order and negotiate a mutually agreeable delivery date. When time delays occur due to circumstances outside of the A-E's contract, the A-E shall notify the Contracting Officer, in writing, prior to missing any submission dates. The letter shall state the reasons for the delay and its expected impact on the project. Failure to deliver products within the time specified may be cause for termination of this contract.

(h) Energy and Water Efficient Design

Energy and water conservation shall be a goal of every project. In accordance with the Energy Policy Act of 2005, GSA is mandated to reduce energy consumption per gross square foot of its facilities by 35 to 20 percent by 2015 relative to fiscal year 2003 through life-cycle cost-effective measures. GSA's 2015 energy goal is 60,668 Btu's per gross square foot. The A/E shall be knowledgeable and advise GSA on cost-effective energy and water savings/reduction opportunities on every project. The A/E shall incorporate energy and water conservation measures identified in the latest edition of the Facilities Standards for the Public Buildings Service, PBS-P100 whenever applicable to a project and without being specifically instructed to do so.

In accordance with the Energy Policy Act of 2005 when selecting electric motors that are of 1 to 500 horsepower, only premium efficient electric motors shall be selected. The efficiency of air conditioning and refrigeration equipment shall be maximized.

In accordance with the Energy Policy Act of 2005 procure only Energy Star products or FEMP designated products which means products designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency except when it is not cost-effective over the life of the product taking energy cost savings into account or no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the agency.

(i) Affirmative Procurement Program design requirements

The APP mandates GSA to incorporate products made from recycled materials whenever those products are used on a project. Those products are identified by the USEPA and have been tabulated into a list referred to as the Comprehensive Procurement Guideline. The A/E is responsible for incorporating CPG listed products whenever possible. The A/E shall prepare all drawings and specifications as necessary to accurately depict those products. The A/E shall also sign the APP form and submit to GSA with the 100% design submission stating that they have incorporated all CPG items for every work order. Refer to paragraph 22 for additional APP requirements.

(j) Sustainable Design and LEED Certification

GSA is committed to being a responsible environmental steward through the consideration of the environment in all our business practices, compliance with environmental laws and regulations, using environmentally beneficial products and services, and using resources in a sustainable manner. The Architect-Engineer shall incorporate principles of sustainable design into all projects. Sustainable design is an integrated, synergistic approach in which all phases of the facility lifecycle are considered. Sustainable design seeks to design, construct and operate buildings to reduce negative impact on the environment and the consumption of natural materials. LEED certification is encouraged on these projects however GSA does require LEED certification on all new buildings and major renovations. Chapter 1.6 of the PBS P100 defines GSA's environmental policies and practices.

(k) Hazardous Materials

Asbestos Containing Material and/or Lead-Based Paint or other hazardous materials may be present in various building components and systems. The Architect-Engineer is responsible for identifying these materials where they impact work on any given work order. The A-E shall hire a qualified environmental consultant, if qualified in-house staff does not exist, for work on the design of such projects and to provide appropriate oversight during the construction period services. The Architect-Engineer shall certify that all portions of the design and construction adequately address all GSA criteria, OSHA standards, EPA regulations, etc. relative to any hazardous substances that may be disturbed during construction activities. GSA shall provide the A-E any information on known hazardous materials in the subject building as supporting documents to the work order.

19. DOCUMENTATION REQUIREMENTS

(a) Technology/Software requirements

All electronic documents submitted to GSA shall be produced using the latest edition of Microsoft WORD for specifications, reports and other written documents and Microsoft Excel for estimates and other spreadsheets. Contract drawings shall be produced using AutoCAD and submitted in a release 2000 format. Project schedules shall be created and submitted in MS Project format. All software used shall be MS windows based and provided by the A-E. If GSA upgrades software during the term of this contract, the A-E shall also upgrade their software at no additional cost to the Government.

(b) Life-Cycle Cost requirements

Life-cycle cost analysis shall be accomplished using the current version of the Building Life-Cycle Cost (BLCC) software which is available for free at the following web site: http://www1.eere.energy.gov/femp/information/download_blcc.html. When using this program select the module for the FEMP Analysis, Energy Project for energy and water conservation and renewable energy projects under the FEMP rules based on 10 CFR 436. Refer to NIST Handbook 135, *Life-Cycle Costing Manual for the Federal Energy Management Program*, for an explanation of the principles of life-cycle cost analysis.

(c) Drawing Requirements

All drawings shall be produced using AutoCAD and submitted in a release 2000 format.

- 1) All Drawings shall conform to the GSA Region 5 "CAD Standards Guideline" Release 1, dated 12/15/2003. All layering, fonts and text height shall be in accordance with the Standards. No customized menus are permitted. Only standard AutoCAD menus may be used.
- 2) All Xrefs shall be fully bound into the drawings. No external references will be accepted.
- 3) AutoCAD drawing files shall be submitted in ".dwg" format on a CD-ROM disk. In addition, the Architect-Engineer shall convert the drawing files to a ".dwt" format and submit these on a CD-ROM disk. (The files can be included on the same disk.)

- 4) In addition to the normal statement of scale for plans, details, etc. (such as $\frac{1}{4}" = 1'-0"$), a graphic scale shall be added adjacent to or underneath stated scale.
- 5) Metric Units: The Architect-Engineer (A/E) shall provide plans in accordance with the Federal Government-wide Executive order (12770) in regards to using Metric units. These plans shall contain "hard" Metric units along with "soft" English (Imperial) units within brackets, ex. 381mm [1'-3"].

(d) Specification Requirements

- 1) The Architect-Engineer shall provide and utilize the latest edition of the American Institute of Architects' (AIA) MASTERSPEC guide specifications to develop project specifications for work orders under this contract. Where AIA guide specifications are not appropriate (or not available) the A/E shall develop his/her own specifications.
- 2) The Architect-Engineer shall utilize GSA furnished AIA supplements to the Masterspec for Division 0 and 1. The GSA project manager will provide these and they include the mandatory use sections, 01505, Construction Waste Management and 01593, Security Regulations and 01595, Safety and Health.
- 3) The Architect-Engineer is required to use the following guide specifications developed by the GSA Regional Fire Protection & Safety Branch in lieu of Masterspec. These guide specifications will be provided by the GSA Fire Protection Engineer when applicable on any work order. No substitute guide specification will be accepted. The following sections are covered by this paragraph:
 - a. 02085 Asbestos Abatement
 - b. 02086 Lead Abatement
 - c. 15320 Fire Pump Systems
 - d. 15330 Sprinkler Systems Modifications
 - e. 15330 Wet Pipe Sprinklers
 - f. 15335 Dry Pipe Sprinklers
 - g. 15380 Wet Chemical Systems
 - h. 16722 Fire Alarm System Modifications
 - i. 16723 Voice Evac Fire Alarm Systems
 - j. 16724 Horn Evac Fire Alarm Systems
- 4) The Specifications shall be submitted in hard copy and on CD-ROM disk in Microsoft WORD format for MS Windows. The A-E shall select a legible font size and use the same font style for all documents submitted on a work order. Each specification section shall be provided as an independent Word document. In addition, all project specifications shall also be provided in one "master file" (i.e. all individual Word documents combined into a single WORD document with matching headers, footers and page numbering.)

(e) Submittal Requirements

- 1) Progress Reviews (50%, 90% 100%, etc.): Submit six (6) blue-line sets of drawings and two hard copies of project specifications, reports and estimates as well as one electronic copy on a CD-ROM disk for all progress review submittals. The quantity and frequency of progress reviews may vary and will be specified within the work order.
- 2) Final document submittal: When project documents are 100% complete and all comments have been incorporated (100% corrected final documents), submit the following:
 - a. One (1) set of plotted reproducible Mylar drawings

- b. Two (2) sets of blue or black line drawings plotted to scale.
- c. Two (2) hard copies of project documents such as specifications, engineering calculations, cost estimate, phasing plan, etc.
- d. Two (2) copies on CD-ROM of the following:
 - 1. All drawings in ".dwg" format
 - 2. All drawings in ".dwt" format
 - 3. All project documents
- (f) Document Security for sensitive but unclassified (SBU) paper and electronic building information

All project documents produced by the Architect-Engineer are considered to be Sensitive But Unclassified documents and should be handled and treated accordingly by the Architect-Engineer and their subcontractors. When documents are no longer needed they should be properly destroyed. The Architect-Engineer shall recover and destroy documents used by their subcontractors when they are no longer needed.

Labeling of information. All SBU building information, either in electronic or paper format, shall have imprinted on **each** page of the information:

PROPERTY OF THE UNITED STATES GOVERNMENT
FOR OFFICIAL USE ONLY
Do not remove this notice
Properly destroy documents when no longer needed

The following paragraph will be included on the **cover** page of the information (such as the cover page on the set of construction drawings and on the cover page of the specifications) and on the label of all magnetic media:

PROPERTY OF THE UNITED STATES GOVERNMENT
COPYING, DISSEMINATION, OR DISTRIBUTION OF THESE DRAWINGS,
PLANS,
OR SPECIFICATIONS TO UNAUTHORIZED USERS IS PROHIBITED
Do not remove this notice
Properly destroy documents when no longer needed

The previous two statements shall be **prominently** labeled in bold type in a size appropriate for the document. On a set of construction drawings, for example, the statements should be in a minimum of **14 point bold type**.

20. HANDBOOKS, CODES AND STANDARDS

- (a) All design starts under this contract shall comply to the maximum extent feasible with the most recent editions of the following codes. The latest edition of these codes and standards in effect at the time the design is started shall be used throughout the design and construction of that project. If there is a conflict between a code requirement and a GSA requirement that is based on a Federal law, Executive order, or GSA owner requirement, the GSA requirement will prevail. In any such case the Contractor shall notify the Contracting Officer (or representative) in writing of the conflict and recommend resolution. Failure to comply with Handbooks, Codes and standards will be noted in the A-E's annual performance appraisal and may be cause for not exercising contract options.

- 1) International Building Code
 - 2) National Fire Protection Association Standards Nos. 13, 72, and 101 (or any others that apply based on the project scope)
 - 3) National Electrical Code
- (b) All design starts under this contract shall comply to the maximum extent feasible with the following GSA Standards and Guidelines. The latest edition of these codes and standards in effect at the time the design is started shall be used throughout the design and construction of that project. Many of these standards and guides can be downloaded free of cost at the Whole Building Design Guide website, www.wbdg.org.
- 1) Facilities Standards for the Public Buildings Service (PBS P-100), revised March 2005; www.gsa.gov
 - 2) Project Estimating Requirements for the Public Building Service (PBS P120), January 2007. www.gsa.gov
 - 3) GSA Pricing Desk Guide, Third Edition, March 15, 2002
 - 4) Americans with Disabilities Act, Accessibility Guidelines for Buildings and Facilities (ADAAG), revised September, 2002; www.wbdg.org.
 - 5) Historic Building Preservation Plan (HBPP) or Historic Structures Report (HSR) – Building specific and provided on an as-needed basis.
 - 6) GSA Region 5 "CAD Standards Guideline" Release 1, Dated 12/15/2003. To be provided via CD-ROM upon award.
 - 7) PBS National CAD standards; www.gsa.gov
 - 8) Uniform Federal Accessibility Standards (UFAS), published August 7, 1984; www.gsa.gov
 - 9) The fourth edition of the U. S. Courts Design Guide, dated December 19, 1997; www.wbdg.org.
 - 10) U. S. Marshals Service Design Guide, Volumes one thru three, dated May, 2001
 - 11) GSA Affirmative Procurement Program Determination (APP Form 1, revised 3/9/04); Appendix D.
 - 12) Report of construction comprehensive procurement guidelines (CPG_ items and recommended recovered materials content levels. (APP Form 2C, revised 3/10/04), Appendix D.

21. PERFORMANCE REVIEW AND APPRAISAL

- (a) The General Services Administration, Public Building Service, Great Lakes Region, will be using the National Institute of Health's (NIH) Contractor Performance System (CPS). The CPS, created by the NIH, is a Federal multiple-agency, shared-file system that collects, maintains, and disseminates contractor performance information as required by Federal Acquisition Regulation, Subpart 42.15 and 36.604. Interim and final evaluations of contractor performance will be prepared on this contract in accordance with FAR Subpart 36.604.
- (b) Interim evaluations shall be prepared both semiannually and annually (to coincide with the anniversary date of the contract). Additional interim reports may be prepared at any time. A final performance evaluation shall be prepared at the time of contract completion.
- (c) In addition to the reports prepared in paragraph (b) of this section, performance evaluation reports shall be prepared for each order in excess of \$25,000. Performance evaluation reports may also be prepared for orders of \$25,000 or less. Reports shall be prepared after final acceptance of the A&E contract work or after order termination. A report may also be prepared after completion of the actual construction of the project.

- (d) Access to interim and final evaluations will be provided to the contractor as soon as practicable after completion of the evaluation. The contractor will be permitted thirty (30) days to review the evaluation and submit additional information, comments, or a rebutting statement. Any disagreement will be referred to an individual one level above the Contracting Officer, whose decision will be final.
- (e) Copies of the evaluations, contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used by all participating Federal Agencies to support future award decisions.
- (f) Annual Review: Prior to the exercise of each yearly option, GSA will conduct an annual performance review with the A/E. GSA will review and discuss the performance during the preceding year, including the quality of drawings and specifications, coordination of work of consultants, number of change orders for design deficiencies or design errors, accuracy of estimates, timeliness of project delivery, quality and quantity of staffing and any other relevant factors. The quality of performance will be strongly considered to determine whether GSA will exercise the next option year

22. THE AFFIRMATIVE PROCUREMENT PROGRAM (APP)

- (a) GSA, as a Federal procuring agency, is required to procure and use products containing recovered materials, environmentally preferable, and bio-based products. These items will be used to the maximum extent feasible unless the item is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.
- (b) In support of this program, products that meet the following criteria are considered acceptable—
 - 1) Products specified by the U.S. Environmental Protection Agency (EPA) as Comprehensive Procurement Guideline (CPG) items and their associated Recovered Materials Advisory Notices (RMANS). The list of CPG items is available at <http://www.epa.gov/cpg>.
 - 2) Products designated as environmentally oriented in the GSA Federal Supply Service "Environmental Products and Services Guide." This guide is available at the FSS Environmental Homepage at <http://www.GSAglobalsupply.gsa.gov>
 - 3) Products to be designated, in the future, as bio-based products on the United States Department of Agriculture (USDA) Bio-based Products List.

APPENDICES

APPENDIX A – LOOK UP TABLE

APPENDIX B – 2630 & 2631

APPENDIX C – APP and CPG forms

ARCHITECT-ENGINEER SERVICE CONTRACT CLAUSES

<u>NUMBER</u>	<u>REFERENCE</u>	<u>TITLE</u>
1. GENERAL		
1.1	FAR 52.202-1	Definitions
1.2	FAR 52.204-7	Central Contractor Registration (CCR)
1.3	FAR 52.233-3	Protest After Award
1.4	FAR 52.253-1	Computer Generated Forms
1.5	GSAR 552.203-71	Restrictions on Advertising
		Authorized Deviation or Variations in Clauses
1.6	GSAR 552.252-6	(Deviation FAR 52.252-6)
1.7		Restriction on Advertising, Marketing and Contract Site Access
2. BID GUARANTEE AND BONDS		
2.1	FAR 52.228-1	Bid Guarantee
2.2	FAR 52.228-2	Additional Bond Security
2.3	FAR 52.228-11	Pledge of Assets
2.4	FAR 52.228-14	Irrevocable Letter of Credit
2.5	FAR 52.228-16	Performance and Payment Bonds (Alt I)
3. STANDARDS OF CONDUCT		
3.1	FAR 52.203-3	Gratuities
3.2	FAR 52.203-5	Covenant Against Contingent Fees
3.3	FAR 52.203-7	Anti-Kickback Procedures
3.4	FAR 52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
3.5	FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity
3.6	FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions
4. INSURANCE		
4.1	FAR 52.228-5	Insurance—Work on a Government Installation
5. BUY AMERICAN AND TRADE AGREEMENTS		
5.1	FAR 52.225-13	Restrictions on Certain Foreign Purchases
5.2	FAR 52.233-4	Applicable Law for Breach of Contract Claim
6. ENVIRONMENTAL PROTECTION		
6.1	FAR 52.204-4	Printing/Copying Double-Sided on Recycled Paper
6.2	FAR 52.223-3	Hazardous Material Identification and Material Safety Data (Alt I)
6.3	FAR 52.223-5	Pollution Prevention and Right-to-Know Information
6.4	FAR 52.223-6	Drug-Free Workplace
6.5	FAR 52.223-9	Estimate of Percentage of Recovered Material Content for EPA Designated Products
6.6	FAR 52.223-14	Toxic Chemical Release Reporting
7. EMPLOYMENT PRACTICES AND LABOR STANDARDS		
7.1	FAR 52.222-1	Notice to the Government of labor Disputes

<u>NUMBER</u>	<u>REFERENCE</u>	<u>TITLE</u>
7.2	FAR 52.222-3	Convict Labor
7.3	FAR 52.222-21	Prohibition of Segregated Facilities
7.4	FAR 52.222-26	Equal Opportunity
7.5	FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
7.6	FAR 52.222-36	Affirmative Action for Workers with Disabilities
7.7	FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
7.8	FAR 52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees
7.9	FAR 52.222-50	Combating Trafficking in Persons
7.10	GSAR 552.228-70	Workers' Compensation Laws
8. SUBCONTRACTING		
8.1	FAR 52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
8.2	FAR 52.219-8	Utilization of Small Business Concerns
8.3	FAR 52.219-9	Small Business Subcontracting Plan
8.4	FAR 52.219-14	Limitations on Subcontracting
8.5	FAR 52.219-16	Liquidated Damages—Subcontracting
8.6	FAR 52.244-4	Subcontractors and Outside Associates and Consultants
8.7	FAR 52.244-5	Competition in Subcontracting
8.8	FAR 52.244-6	Subcontracting for Commercial Items and Commercial Components
9. TAXES		
9.1	FAR 52.229-3	Federal, State, and Local Taxes
9.2	FAR 52.229-4	Federal, State, and Local Taxes (Noncompetitive Contract)
10. PERFORMANCE		
10.1	FAR 52.237-2	Protection of Government Buildings, Equipment, and Vegetation
11. PAYMENT		
11.1	FAR 52.232-10	Payments Under Fixed-Price Architect Engineer Contracts
11.2	FAR 52.232-17	Interest
11.3	FAR 52.232-23	Assignment of Claims
11.4	FAR 52.232-26	Prompt Payment for Fixed-Price Architect-Engineer Contracts
11.5	FAR 52.232-33	Payment by Electronic Funds Transfer—Central Contractor Registration
11.6	GSAR 552.232-70	Invoice Requirements
11.7	GSAR 552.232-78	Payment Information
12. AUDITS AND COST AND PRICE DATA		
12.1	FAR 52.215-2	Audit and Records—Negotiation
12.2	FAR 52.215-10	Price Reduction for Defective Cost or Pricing Data

<u>NUMBER</u>	<u>REFERENCE</u>	<u>TITLE</u>
12.3	FAR 52.215-12	Subcontractor Cost or Pricing Data
12.4	FAR 52.215-13	Subcontractor Cost or Pricing Data (Modifications)
12.5	FAR 52.215-15	Pension Adjustments and Asset Reversions
12.6	FAR 52.215-17	Waiver or Facilities Capital Cost of Money
12.7	FAR 52.215-18	Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other than Pensions
12.8	FAR 52.215-19	Notification of Ownership Changes
12.9	FAR 52.215-21	Requirement for Cost or Pricing Data or Information Other than Cost or Pricing Data (Modifications)
12.10	GSAR 552.215-70	Examination of Records by GSA
13. ADJUSTMENTS		
13.1	FAR 52.243-1	Changes—Fixed-Price (Alt III)
13.2	FAR 52.248-2	Value Engineering—Architect-Engineering
13.3	FAR 52.217-8	Option to Extend Services
13.4	FAR 52.217-9	Option to Extend the Term of the Contract
14. DISPUTES		
14.1	FAR 52.233-1	Disputes (Alt I)
15. PATENTS, DATA, AND COPYRIGHTS		
15.1	FAR 52.227-1	Authorization and Consent
16. TERMINATION		
16.1	FAR 52.249-7	Termination (Fixed-Price Architect-Engineer)
17. COST ACCOUNTING STANDARDS		
17.1	FAR 52.230-2	Cost Accounting Standards
17.2	FAR 52.230-3	Disclosure and Consistency of Cost Accounting Practices
17.3	FAR 52.230-6	Administration of Cost Accounting Standards
18. OTHER		
18.1	FAR 52.242-13	Bankruptcy
18.2	FAR 52.215-8	Order of Precedence
18.3	FAR 52.236-22	Design Within Funding Limitations
18.4	FAR 52.236-23	Responsibility of the Architect-Engineer Contractor
18.5	FAR 52.236-24	Work Oversight in Architect-Engineer Contracts
18.6	FAR 52.236-25	Requirements for Registration of Designers
18.7	FAR 52.242-14	Suspension of Work
18.8	FAR 52.219-28	Post Award Small Business Representation
18.9	FAR 52.204-9	Personal Identity Verification of Contractor Personnel
18.10	GSAR 552.227-71	Drawings and Other Data to Become Property of Government

1. GENERAL

1.1. FAR 52.202-1 DEFINITIONS (JUL 2004)

- (a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—
 - (1) The solicitation, or amended solicitation, provides a different definition;
 - (2) The contracting parties agree to a different definition;
 - (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
 - (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at [http:// www.acqnet.gov](http://www.acqnet.gov) at the end of the FAR, after the FAR Appendix.

1.2. FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (AUG 2008)

- (a) Definitions. As used in this clause—
 - “Central Contractor Registration (CCR) database” means the primary Government repository for Contractor information required for the conduct of business with the Government.
 - “Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.
 - “Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.
 - “Registered in the CCR database” means that—
 - (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
 - (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.
- (b)
 - (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
 - (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
 - (1) An offeror may obtain a DUNS number—

- (i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.
- (2) The offeror should be prepared to provide the following information:
 - (i) Company legal business.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company Physical Street Address, City, State, and ZIP Code.
 - (iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).
 - (v) Company Telephone Number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).
 - (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g)
 - (1)
 - (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.
 - (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the

Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

- (h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

1.3. FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996)

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—
- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its rights to an adjustment within 30 days after the end of the period of work stoppage; provided that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under the contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the re-

quirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

1.4. FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided, there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

1.5. GSAR 552.203-71 RESTRICTION ON ADVERTISING (SEP 1999)

The Contractor shall not refer to this contract in commercial advertising or similar promotion in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

1.6. GSAR 552.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (DEVIATION FAR 52.252-6) (SEP 1999)

- (a) Deviations to FAR clauses.

This solicitation or contract indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) clause by the addition of "(DEVIATION)" after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).

This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) clause that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR clause no.))" after the date of the clause.

- (b) Deviations to GSAR clauses. This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation clause by the addition of "(DEVIATION)" after the date of the clause.
- (c) "Substantially the same as" clauses. Changes in wording of clauses prescribed for use on a "substantially the same as" basis are not considered deviations.

1.7. RESTRICTION ON ADVERTISING, MARKETING, AND CONTRACT SITE ACCESS

In accordance with GSAR 552.203-71, Restriction on Advertising, the contractor is precluded from referring to GSA contracts in commercial advertising in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The contractor may not disseminate or advertise any information concerning this project/contract without prior written approval of the Contracting Officer. The contractor may not photograph the project site other than as required by the contract or as directed by the Contracting Officer. Access to Federally controlled space is governed by stringent security requirements. The contractor is prohibited from bringing individuals to the project/contract site for the purpose of marketing, self promotion, media tours, and any other event or activity without the express written consent of the Contracting Officer. All media inquiries should be directed to the Contracting Officer. Any request for access to the project/contract site, other than to perform work related to the contract, shall be made in writing to the Contracting Officer.

2. BID GUARANTEE AND BONDS

2.1. FAR 52.228-1 BID GUARANTEE (SEPT 1996)

- (a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.
- (b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds--
 - (1) To unsuccessful bidders as soon as practicable after the opening of bids; and
 - (2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.
- (c) The amount of the bid guarantee shall be **20%** percent of the bid price.
- (d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within **15** days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.
- (e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

2.2. FAR 52.228-2 ADDITIONAL BOND SECURITY

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if-

- (a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or
- (d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

2.3. FAR 52.228-11 PLEDGE OF ASSETS (FEB 1992)

- (a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--
 - (1) Pledge of assets; and
 - (2) Standard Form 28, Affidavit of Individual Surety.
- (b) Pledges of assets from each person acting as an individual surety shall be in the form of--
 - (1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;
 - (2) A recorded lien on real estate. The offeror will be required to provide--
 - (i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due

and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

- (ii) Evidence of the amount due under any encumbrance shown in the evidence of title;
- (iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

2.4. FAR 52.228-14 IRREVOCABLE LETTER OF CREDIT (FEB 2007)

- (a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.
- (b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.
- (c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—
 - (1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;
 - (2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:
 - (i) For contracts subject to the Miller Act, the later of—
 - (A) One year following the expected date of final payment;
 - (B) For performance bonds only, until completion of any warranty period; or
 - (C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.
 - (ii) For contracts not subject to the Miller Act, the later of—
 - (A) 90 days following final payment; or
 - (B) For performance bonds only, until completion of any warranty period.
- (d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.
- (e) The following format shall be used by the issuing financial institution to create an ILC:

or Name and Address]

Issue Date _____

Irrevocable Letter of Credit No. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____ (for reference only)

To: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ _____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead]

or Name and Address]

(Date) _____

Our Letter of Credit Advice Number _____

Beneficiary: _____ [U.S. Government agency]

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$ _____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____
[Name and address of financial institution]

Pay to the order of _____ [Beneficiary Agency] _____ the sum of United States \$ _____. This draft is drawn under Irrevocable Letter of Credit No. _____.

[Beneficiary Agency]

[By]

2.5. FAR 52.228-16 PERFORMANCE AND PAYMENT BONDS--OTHER THAN CONSTRUCTION (ALTERNATE I) (FEB 2007)

(a) *Definitions.* As used in this clause—

“Original contract price” means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the original contract price and a payment bond (Standard Form 1416) in an amount equal to _____ percent of the original contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within _____ days, but in any event, before starting work.

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of the Treasury
Financial Management Service
Surety Bond Branch
3700 East West Highway, Room 6F01
Hyattsville, MD 20782.
Or via the internet at <http://www.fms.treas.gov/c570/>.

3. STANDARDS OF CONDUCT

3.1. FAR 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—
(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) above, the Government is entitled—
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- (e) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

3.2. FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.
- "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.
- "Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.
- "Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

3.3. FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

- (a) Definitions. "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- "Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- "Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.
- "Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause,

(1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and

(2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor. "Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 USC 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) Offset the amount of the kickback against any monies owed by the United States under this contract and/or (ii) Direct that the Contractor withhold from sums owed the subcontractor, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

3.4. FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) *(Applicable to solicitation and contracts in excess of \$100,000)*

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--
(A) Exchanging the information covered by such subsections for anything of value; or
(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

3.5. FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) *(Applicable to solicitation and contracts in excess of \$100,000)*

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be--
- (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
 - (3) For cost-plus-award-fee contracts--
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may--
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
 - (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

3.6. FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2003)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant,

loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.
 - (A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
 - (E) Only those agency and legislative liaison activities expressly authorized by paragraph (b)(3)(i) of this clause are permitted under this clause.
 - (ii) Professional and technical services.
 - (A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this clause, does not apply in the case of—
 - (1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid,

proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those professional and technical services expressly authorized by paragraph (b)(3)(ii) of this clause are permitted under this clause.

(4) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under paragraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes—

- (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
- (d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.
- (e) *Penalties.*
- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
 - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

4. INSURANCE

4.1. FAR 52.228-5 INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- (b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective--
 - (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
 - (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

NOTE: Liability insurance coverage, written on the comprehensive form of policy, is required in the amount of \$500,000 per occurrence for bodily injury and \$50,000 per occurrence for property damage.

5. BUY AMERICAN AND TRADE AGREEMENTS

5.1. FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2007)

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

5.2. FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

6. ENVIRONMENTAL PROTECTION

6.1. FAR 52.204-4 PRINTING OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

- (a) Definitions. As used in this clause--

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as--

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper.

"Recovered material," for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as--
 - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.
- (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer print-out paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

6.2. FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) AND (ALTERNATE 1-JUL 1995)

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
 - (3) The Government is not precluded from using similar or identical data acquired from other sources.

ALTERNATE 1 JUL 1995

- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
- (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
 - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

6.3. FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO KNOW INFORMATION (AUG 2003)

- (a) *Definitions.* As used in this clause—
"Priority chemical" means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.
"Toxic chemical" means a chemical or chemical category listed in 40 CFR 372.65
- (b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109)
- (c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
- (1) The emergency planning reporting requirements of Section 302 of EPCRA.
 - (2) The emergency notice requirements of Section 304 of EPCRA.
 - (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
 - (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
 - (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
 - (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

6.4. FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

- (a) *Definitions.* As used in this clause--
"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

"Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about--
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

6.5. FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (AUG 2008) *(Applicable to solicitation and contracts that exceed \$100,000)*

(a) *Definitions.* As used in this clause—

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item.

Postconsumer material is a part of the broader category of "recovered material."

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

- (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and
- (2) Submit this estimate to the Contracting Officer's Representative.

6.6. FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) *(The following clause is applicable to competitively awarded contracts with a value equal to or greater than \$100,000)*

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
- (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
- (4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System (NAICS) sectors:
 - (i) Major group code 10 (except 1011, 1081, and 1094).
 - (ii) Major group code 12 (except 1241).
 - (iii) Major group codes 20 through 39.
 - (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
 - (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*) 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
- (5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

- (1) The Contractor shall notify the Contracting Officer; and
- (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—
 - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
 - (ii) Continue to file the annual Form R for the life of the contract for such facility.

- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall--
 - (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
 - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

7. EMPLOYMENT PRACTICES AND LABOR STANDARDS

7.1. FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

7.2. FAR 52.222-3 CONVICT LABOR (JUN 2003)

- (a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons—
 - (1) On parole or probation to work at paid employment during the term of their sentence;
 - (2) Who have been pardoned or who have served their terms; or
 - (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
 - (i) The worker is paid or is in an approved work training program on a voluntary basis;
 - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
 - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
 - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

7.3. FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The

Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

7.4. FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The

Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

7.5. FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)

(a) *Definitions.* As used in this clause—

“All employment openings” means all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Executive and top management” means any employee—

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

"Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

"Special disabled veteran" means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General.

(1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

- (iii) Rate of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings.

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings.

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

7.6. FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Contractor agrees to post employment notices stating—
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Fed-

eral Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance.

If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts.

The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

7.7. FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER
ELIGIBLE VETERANS (SEPT 2006)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)."

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

7.8. FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

(a) *Definition.* As used in this clause-

"United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlrb.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B-Compliance Evaluations, Complaint Investigations and Enforce-

ment Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to-

- (1) Contractors and subcontractors that employ fewer than 15 persons;
- (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
- (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
- (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that-

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall-

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR part 470, Subpart B-Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

7.9. FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (APR 2006)

(a) *Definitions.* As used in this clause—

"Coercion" means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Involuntary servitude” includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

- (1) Notify its employees of—
 - (i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and
 - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may render the Contractor subject to—

- (1) Required removal of a Contractor employee or employees from the performance of the contract;
- (2) Required subcontractor termination;
- (3) Suspension of contract payments;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

- (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

7.10 GSAR 552.228-70 WORKERS' COMPENSATION LAWS (SEP 1999)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workers' compensation laws to all lands and premises owned or held by the United States.

8. SUBCONTRACTING

8.1. FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2007)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
 - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

8.2. FAR 52.219-8 UTILIZATION OF SMALL CONCERNS (MAY 2004)

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned

small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract--

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that--

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

8.3. FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (AUG 2008) *(Applicable to acquisitions with a value of \$550,000 or more)*

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause--

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with

the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Electronic Subcontracting Reporting System (eSRS)" means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally

allocated as indirect costs. In accordance with 43 U.S.C. 1626:

- (i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting
 - (ii) goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
 - (ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
 - (A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
 - (B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.
 - (C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
 - (D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.
- (2) A statement of—
- (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
 - (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
 - (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
 - (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
 - (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
 - (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
 - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—
- (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns; and
 - (vi) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the

Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
- (iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
- (v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and
- (vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official

responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
- (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—
 - (A) Whether small business concerns were solicited and, if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
 - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
 - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
 - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
 - (G) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact—
 - (A) Trade associations;
 - (B) Business development organizations;
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
 - (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made

to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

- (k) The failure of the Contractor or subcontractor to comply in good faith with—
- (1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or
 - (2) An approved plan required by this clause, shall be a material breach of the contract.
- (l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.
- (1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.
 - (i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.
 - (ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.
 - (iii) The authority to acknowledge receipt or reject the ISR resides—
 - (A) In the case of the prime Contractor, with the Contracting Officer; and
 - (B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.
 - (2) *SSR*.
 - (i) Reports submitted under individual contract plans—
 - (A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.
 - (B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.
 - (C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.
 - (D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due

30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

8.4. FAR 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a non-manufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

8.5. FAR 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)

(a) "Failure to make a good faith effort to comply with the subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

8.6. FAR 52.244-4 SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (MAR 2007)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

8.7. FAR 52.244-5 COMPETITION IN SUBCONTRACTING (MAR 2007)

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

8.8. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (MAR 2007)

- (a) *Definitions.* As used in this clause—
 - "Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
 - "Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

- (c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:
- (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a));
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - (v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39.
 - (vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

9. TAXES

9.1. FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2007)

- (a) As used in this clause—

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax,

provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and reasonable basis exists to sustain the exemption.

9.2. FAR 52.229-4 FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE CONTRACT) (APR 2003) *(Applicable to noncompetitive negotiated contracts only)*

- (a) "After-imposed tax" means any new or increased Federal, State, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax" means any amount of Federal, State, or local tax or duty, other than an excepted tax, that would have otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"Contract date" means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

"Excepted tax" means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

- (b) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed tax, or of tax or duty specifically excluded from the contract price by a term or condition of this contract that the Contractor is re-

quired to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

- (d) The contract price shall be decreased by the amount of any after-relieved tax. The Government shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government for such taxes. The Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.
- (e) The contract price shall be decreased by the amount of any Federal, State, or local tax, other than an excepted tax, that was included in the contract price and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to Federal, State, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.
- (h) The Government shall furnish evidence appropriate to establish exemption from any Federal, State, or local tax when (1) the Contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price and (2) a reasonable basis exists to sustain the exemption.

10. PERFORMANCE

10.1. FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) *(Applies when services are performed on Government installation.)*

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

11. PAYMENT

11.1 FAR 52.232-10 PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (FEB 2007)

- (a) As used in this clause—

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the

Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and reasonable basis exists to sustain the exemption.

11.2. FAR 52.232-17 INTEREST (JUN 1996)

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 USC 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

11.3. FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 USC 3727, 41 USC 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

11.4. FAR 52.232-26 PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (OCT 2003)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments-

- (1) *Due date.* The due date for making invoice payments is-
 - (i) For work or services completed by the Contractor, the later of the following two events:
 - (A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(iii) of this clause).
 - (B) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice, when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the settlement.
 - (ii) The due date for progress payments is the 30th day after Government approval of Contractor estimates of work or services accomplished.
 - (iii) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due date is the 30th day after the date of the Contractor's invoice or payment request, provided the designated billing office receives a proper invoice or payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.
- (2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.
 - (i) Name and address of the Contractor.
 - (ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)
 - (iii) Contract number or other authorization for work or services performed (including order number and contract line item number).
 - (iv) Description of work or services performed.
 - (v) Delivery and payment terms (e.g., discount for prompt payment terms).

- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
 - (vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.
 - (viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
 - (ix) Electronic funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.
 - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
 - (x) Any other information or documentation required by the contract.
- (3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.
- (i) The designated billing office received a proper invoice.
 - (ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.
 - (iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
- (4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.
- (i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval is deemed to occur constructively as shown in paragraphs (a)(4)(i)(A) and (B) of this clause. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.
 - (A) For work or services completed by the Contractor, Government acceptance is deemed to occur constructively on the 7th day after the Contractor completes the work or services in accordance with the terms and conditions of the contract.
 - (B) For progress payments, Government approval is deemed to occur on the 7th day after the designated billing office receives the Contractor estimates.
 - (ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.
- (5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt pay-

ment improperly. The Government will calculate the interest penalty in accordance with 5 CFR part 1315.

(6) Additional interest penalty.

- (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315, in addition to the interest penalty amount only if-
 - (A) The Government owes an interest penalty of \$1 or more;
 - (B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and
 - (C) The contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.
- (ii) (A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall-
 - (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
 - (2) Attach a copy of the invoice on which the unpaid late payment interest is due; and
 - (3) State that payment of the principal has been received, including the date of receipt.(B) If there is no postmark or the postmark is illegible-
 - (1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or
 - (2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.
- (iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(d) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

11.5. FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (CCR) (OCT 2003)

(a) Method of payment.

- (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House

Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31CFR part 210.

- (d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- (e) Liability for uncompleted or erroneous transfers.
 - (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—
 - (i) Making a correct payment;
 - (ii) Paying any prompt payment penalty due; and
 - (iii) Recovering any erroneously directed funds.
 - (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—
 - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- (f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
- (i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

11.6. GSAR 552.232-70 INVOICE REQUIREMENTS (SEP 1999)

- (a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this contract or purchase/delivery order.
- (b) Invoices must include the PEGASYS Document Number (PDN) provided below or on the purchase/delivery order.
PDN Number: See page 1 of this contract: If Standard Form 33, block 21; or If Standard Form 26, block 14.
- (c) In addition to the requirements for a proper invoice specified in the Prompt Payment clause of this contract or purchase/delivery order, the following information or documentation must be submitted with each invoice: See orders issued under this contract.

11.7. 552.232-78 PAYMENT INFORMATION (JUL 2000)

The General Services Administration (GSA) makes information on contract payments available electronically at <http://www.finance.gsa.gov>. The Contractor may register at the site and review its record of payments. This site provides information only on payments made by GSA, not by other agencies.

12. AUDITS AND COST & PRICING DATA

12.1. FAR 52.215-2 AUDIT AND RECORDS—NEGOTIATION (MAY 2007)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
- (c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—
 - (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- (d) *Comptroller General—*
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting

Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (2) For which cost or pricing data are required; or
 - (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

12.2. FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

- (1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
- (2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
- (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

- (1) The actual subcontract; or
- (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

- (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
- (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
- (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—
 - (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
 - (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or non-current.

12.3. FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) *(The following clause is applicable to negotiated acquisitions with a value equal to or greater than \$550,000)*

- (a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—
 - (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or
 - (2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications.

12.4. FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA (MODIFICATIONS) (OCT 1997)

- (a) The requirements of paragraphs (b) and (c) of this clause shall—

- (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
- (2) Be limited to such modifications.

- (b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

12.5. FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)

- (a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.
- (b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be--
 - (1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and
 - (2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.
- (c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.
- (d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

12.6. FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) *(Applicable to negotiated acquisitions with a value equal to or greater than \$550,000 and if contractor did not propose facilities capital cost of money in its offer)*

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

12.7. FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JULY 2005) *(Applicable to negotiated acquisitions with a value equal to or greater than \$550,000)*

- (a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

12.8. FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) *(The following clause is applicable to negotiated acquisitions with a value equal to or greater than \$550,000)*

(a) The Contractor shall make the following notifications in writing:

- (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
- (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
- (2) Provide the ACO or designated representative ready access to the records upon request;
- (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
- (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

12.9. FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (MODIFICATIONS) (OCT 1997)

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If—

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

- (B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—
 - (1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - (2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - (3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.
- (2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data.

If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

- (1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
- (2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

12.10. GSAR 552.215-70 EXAMINATION OF RECORDS BY GSA (FEB 1996)

The Contractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

13. ADJUSTMENTS

13.1. FAR 52.243-1 CHANGES—FIXED-PRICE (ALT. III) (AUG 1987)

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services being performed.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (f) No services for which an additional cost or fee will be charged by the contractor shall be furnished without the prior written authorization of the Contracting Officer.

13.2. FAR 52.248-2 VALUE ENGINEERING--ARCHITECT-ENGINEER (MAR 1990)

- (a) General. The Contractor shall (1) perform value engineering (VE) services and submit progress reports as specified in the Schedule; and (2) submit to the Contracting Officer any resulting value engineering proposals (VEP's). Value engineering activities shall be performed concurrently with, and without delay to, the schedule set forth in the contract. The services shall include VE evaluation and review and study of design documents immediately following completion of the 35 percent design state or at such stages as the Contracting Officer may direct. Each separately priced line item for VE services shall define specifically the scope of work to be accomplished and may include VE studies of items other than design documents. The Contractor shall be paid as the contract specifies for this effort, but shall not share in savings which may result from acceptance and use of VEP's by the Government.
- (b) Definitions. 'Life cycle cost,' as used in this clause, is the sum of all costs over the useful life of a building, system or product. It includes the cost of design, construction, acquisition, operation, maintenance, and salvage (resale) value, if any. 'Value engineering,' as used in this clause, means an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety. 'Value engineering proposal,' as used in this clause, means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.
- (c) Submissions. After award of an architect-engineering contract the contractor shall--
 - (1) Provide the Government with a fee breakdown schedule for the VE services (such as criteria review, task team review, and bid package review) included in the contract schedule;
 - (2) Submit, for approval by the Contracting Officer, a list of team members and their respective resumes representing the engineering disciplines required to complete the study effort, and evidence of the team leader's qualifications and engineering discipline. Subsequent changes or substitutions to the approved VE team shall be submitted in writing to the Contracting Officer for approval; and
 - (3) The team leader shall be responsible for prestudy work assembly and shall edit, reproduce, and sign the final report and each VEP. All VEP's, even if submitted earlier as an individual submission, shall be contained in the final report.

- (d) VEP preparation. As a minimum, the contractor shall include the following information in each VEP:
- (1) A description of the difference between the existing and proposed design, the comparative advantages and disadvantages of each, a justification when an item's function is being altered, the effect of the change on system or facility performance, and any pertinent objective test data.
 - (2) A list and analysis of design criteria or specifications that must be changed if the VEP is accepted.
 - (3) A separate detailed estimate of the impact on project cost of each VEP, if accepted and implemented by the Government.
 - (4) A description and estimate of costs the Government may incur in implementing the VEP, such as design change cost and test and evaluation cost.
 - (5) A prediction of any effects the proposed change may have on life cycle cost.
 - (6) The effect the VEP will have on design or construction schedules.
- (e) VEP acceptance. Approved VEP's shall be implemented by bilateral modification to this contract.

13.3. FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within _____ [@@Insert the period of time within which the Contracting Officer may exercise the option].

13.4. FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within _____ [@@Insert the period of time within which the Contracting Officer may exercise the option]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least _____ days [@@60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ @@(months) (years).

14. DISPUTES

14.1. FAR 52.233-1 DISPUTES (ALT I) (JUL 2002)

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

- (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the tendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

15. PATENTS, DATA AND COPYRIGHTS

15.1. FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)

- (a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—
 - (1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or
 - (2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this

clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

16. TERMINATION

16.1. FAR 52.249-7 TERMINATION (FIXED-PRICE ARCHITECT-ENGINEER) (APR 1984)

- (a) The Government may terminate this contract in whole or, from time to time, in part, for the Government's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the Government, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
- (c) If the termination is for failure of the Contractor to fulfill the contract obligations, the Government may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Government.
- (d) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.
- (e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

17. COST ACCOUNTING STANDARDS

17.1. FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998) *(The following clause is applicable to negotiated contracts with a value equal to or greater than \$500,000)*

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
 - (1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
 - (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
 - (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modi-

fications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

- (4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to take to the Contractor's established cost accounting practices.
 - (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
 - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
 - (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.
- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

17.2. FAR 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998)

- (a) The Contractor, in connection with this contract, shall—
- (1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.
 - (2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure

Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3) (i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

17.3. FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (AUG 2008) *(The following clause is applicable to negotiated contracts with a value equal to or greater than \$500,000)*

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

(a) *Definitions.* As used in this clause—

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

"Cognizant Federal agency official (CFAO)" means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

"Desirable change" means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

"Fixed-price contracts and subcontracts" means—

- (1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;
- (2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);
- (3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and
- (4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

"Flexibly-priced contracts and subcontracts" means—

- (1) Fixed-price contracts and subcontracts described at FAR 16.203-1(a)(2), 16.204, 16.205, and 16.206;
- (2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);
- (3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);
- (4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and
- (5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

"Noncompliance" means a failure in estimating, accumulating, or reporting costs to—

- (1) Comply with applicable CAS; or
- (2) Consistently follow disclosed or established cost accounting practices.

"Required change" means—

- (1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or
- (2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

"Unilateral change" means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

- (b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost

Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clause at FAR 52.230-3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3)—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

- (i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.
 - (ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts; and
 - (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—
- (1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;
 - (2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—
 - (i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and
 - (ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;
 - (3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and
 - (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:
- (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).
 - (2) For unilateral changes—
 - (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
 - (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.
 - (B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
 - (ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:
 - (A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.
 - (B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
 - (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated

had the cost impact been known at the time the contracts and subcontracts were negotiated;
and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230-3; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

18. OTHER

18.1. FAR 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

18.2. FAR 52.215-8 ORDER OF PRECEDENCE (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications

18.3. FAR 52.236-22 DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)

(a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) below. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

- (b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Contractor's revised estimate of construction cost. The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) below, or the Government may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.
- (c) The estimated construction contract price for the project described in this contract will be provided to the contractor.

18.4. FAR 52.236-23 RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)

- (a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.
- (c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.
- (d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

18.5. FAR 52.236-24 WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

18.6. FAR 52.236-25 REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUN 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

18.7. FAR 52.242-14 SUSPENSION OF WORK (APR 1984)

- (a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor.

tor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

18.8 FAR 52.219-28 POST-AWARD SMALL BUSINESS REPRESENTATION

- (a) *Definitions.* As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

- (b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:
 - (1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.
 - (2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.
 - (3) For long-term contracts—
 - (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
 - (ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.
- (c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardtopics/>.
- (d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.
- (e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.
- (f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.
- (g) If the Contractor does not have representations and certifications in ORCA, or does not have a

representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it ☐ is, ☐ is not a small business concern under NAICS Code

_____ assigned to contract number _____.

[Contractor to sign and date and insert authorized signer's name and title].

18.9 FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL

- (a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended.
- (b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

18.10 GSAR 552.227-71 DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAY 1989)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the 'person for whom the work was prepared' for the purpose of authorship in any copyrightable work under section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of works beyond such period.

END GSA 3504AE - (UPDATED AUGUST 2008)

APPENDIX A
SUPPLEMENTAL ARCHITECT-ENGINEER CONTRACT LOOKUP TABLE

The lookup table is for use in determining design fees on work orders under supplemental Architect-Engineer contracts for construction projects estimated to be less than \$2,000,000.00.

The column titled "ECCA" provides the estimated construction contract amount.

The column titled "TOTAL FEE %" provides the percentage of anticipated design fee covered by the statutory fee limitation plus anticipated services excluded from the statutory limitation. For projects that require significant effort by subcontractors such as a Fire Protection Engineer, Preservation Architect or Industrial Hygienist, it is anticipated that the Total Fee will cover an appropriate percentage of their excluded costs. Where significant effort of subcontractors is involved, it may be necessary to negotiate the contract based on level of effort in lieu of the lookup table.

The column titled "FEE IN \$" represents the product of the total fee percentage multiplied by the ECCA. The dollar amount (including profit) includes costs for concepts, tentative design or preliminary working drawings services, working drawing services, cost estimate, construction schedule and phasing plan, clarification drawings and specifications, demolition drawing and specifications, permanent and demountable partitions design, and reproduction, telecommunication and postage costs incidental to preparing contract documents. Costs associated with feasibility studies, field measurements, existing facility survey, travel, construction inspection/observation are not included and must be negotiated separately.

The lookup table provides fee schedules for three project types as generally described below:

- A. Simplistic project types include smaller projects that typically involve repairs, like for like component replacement and smaller scale work such as the replacement of a smaller single-story roof or minor ADA improvements. Simplistic projects are generally commensurate with project budgets, where a small project may require a minimal level of design to assure successful construction. Some typical projects may include, but are not limited to, painting and carpeting, ceiling and lighting replacement, exterior painting and sealant projects, minor ADA improvements, exterior restoration of masonry or other building façade materials, repairs to plazas, masonry and concrete walls, fences, and other landscape elements, signage replacement, minor structural repairs or modifications to support a new piece of equipment, direct replacement of mechanical equipment, such as a single HVAC unit replacement, replacement of an electrical panelboard or lighting and repairs to various building systems including HVAC, piping, EMS and electrical.
- B. Average project types include most client space renovation/reconfiguration projects and their associated mechanical, electrical, fire protection, hazardous materials abatement, and other requirements as necessary for a complete renovation. Included also are projects where a design solution is being sought to remedy a problem and will likely result in the introduction of new design elements, projects that impact historic preservation and the art in architecture program as well as medium to large roof replacements and exterior restoration projects having a significant historic preservation component. Most mechanical and electrical renovation projects fall within this category including the replacement of boilers, chillers, cooling towers, HVAC units and electrical distribution equipment, and the expansion of EMS, sprinkler and fire alarm systems. Some typical projects may include, but are not limited to, client expansion and reconfiguration, renovation of existing Judges Chambers and Courtrooms, renovation of existing U.S. Marshals facilities, minor holding cell facilities for other law enforcement agencies, backfill of existing space with a new client, and replacement of boilers, chillers, HVAC equipment and electrical distribution equipment with the most appropriate state-of-the-art system.
- C. Complex project types include major client space projects, projects with extensive special requirements and multi phased projects affecting multiple building systems or very large areas of the building. Also included are the most complex roof projects involving multiple roof materials and possibly atria or historic preservation aspects, new buildings and building additions such as sallyports or new loading dock facilities and the creation of special use space such as a conference center or auditorium. Also, projects that are solely historic preservation/restoration in nature, major mechanical and electrical renovation projects such as the conversion of an entire building from one method of heating/cooling to another and the expansion of electrical capacity. A project that installs a new, or replaces an existing, sprinkler or fire alarm system is also considered complex. Some typical projects include the

design of a new courtroom and/or chambers in space previously used as office, the construction of prisoner detention facilities, restoration of a historic building feature, converting a dual duct system to VAV, converting a building utilizing steam heat to hot water heat, installing an additional electrical service and associated switchgear and the installation of a motor generator set and associated emergency power modifications.

	SIMPLISTIC PROJECT		AVERAGE PROJECT		COMPLEX PROJECT	
	ECCA	TOTAL FEE % FEE IN \$	TOTAL FEE % FEE IN \$	FEE IN \$	TOTAL FEE % FEE IN \$	FEE IN \$
5,000		7.260 \$ 363.00	8.250	\$412.50	9.240	\$ 462.00
10,000		7.187 \$ 718.74	8.168	\$816.75	9.148	\$ 914.76
15,000		7.116 \$ 1,067.33	8.086	\$1,212.87	9.056	\$ 1,358.42
20,000		7.044 \$ 1,408.87	8.005	\$1,600.99	8.966	\$ 1,793.11
25,000		6.974 \$ 1,743.48	7.925	\$1,981.23	8.876	\$ 2,218.98
30,000		6.904 \$ 2,071.26	7.846	\$2,353.70	8.787	\$ 2,636.14
35,000		6.555 \$ 2,294.31	7.767	\$2,718.52	8.699	\$ 3,044.75
40,000		6.450 \$ 2,579.86	7.476	\$2,990.29	8.612	\$ 3,444.91
45,000		6.359 \$ 2,861.70	7.371	\$3,316.97	8.526	\$ 3,836.77
50,000		6.281 \$ 3,140.33	7.280	\$3,639.93	8.393	\$ 4,196.63
55,000		6.211 \$ 3,416.14	7.199	\$3,959.62	8.300	\$ 4,565.20
60,000		6.149 \$ 3,689.42	7.127	\$4,276.38	8.217	\$ 4,930.41
65,000		6.093 \$ 3,960.44	7.062	\$4,590.51	8.142	\$ 5,292.58
70,000		6.042 \$ 4,229.39	7.003	\$4,902.24	8.074	\$ 5,652.00
75,000		5.995 \$ 4,496.45	6.949	\$5,211.79	8.012	\$ 6,008.89
80,000		5.952 \$ 4,761.77	6.899	\$5,519.32	7.954	\$ 6,363.45
85,000		5.912 \$ 5,025.42	6.853	\$5,824.98	7.901	\$ 6,715.88
90,000		5.875 \$ 5,287.69	6.810	\$6,128.91	7.851	\$ 7,066.27
95,000		5.841 \$ 5,548.50	6.770	\$6,431.22	7.805	\$ 7,414.81
100,000		5.808 \$ 5,808.00	6.732	\$6,732.00	7.762	\$ 7,761.60
105,000		5.777 \$ 6,066.27	6.697	\$7,031.35	7.721	\$ 8,106.74
110,000		5.749 \$ 6,323.36	6.663	\$7,329.35	7.682	\$ 8,450.31
115,000		5.721 \$ 6,579.36	6.631	\$7,626.08	7.646	\$ 8,792.42
120,000		5.695 \$ 6,834.31	6.601	\$7,921.59	7.611	\$ 9,133.13
125,000		5.671 \$ 7,088.27	6.573	\$8,215.95	7.578	\$ 9,472.50
130,000		5.647 \$ 7,341.28	6.546	\$8,509.21	7.547	\$ 9,810.62
135,000		5.625 \$ 7,593.38	6.520	\$8,801.42	7.517	\$ 10,147.52
140,000		5.603 \$ 7,844.62	6.495	\$9,092.63	7.488	\$ 10,483.27
145,000		5.583 \$ 8,095.03	6.471	\$9,382.88	7.461	\$ 10,817.90
150,000		5.563 \$ 8,344.65	6.448	\$9,672.20	7.434	\$ 11,151.48
155,000		5.544 \$ 8,593.50	6.428	\$9,960.64	7.409	\$ 11,484.04
160,000		5.526 \$ 8,841.61	6.405	\$10,248.23	7.385	\$ 11,815.61
165,000		5.506 \$ 9,089.02	6.385	\$10,535.00	7.361	\$ 12,146.24
170,000		5.492 \$ 9,335.75	6.365	\$10,820.98	7.339	\$ 12,475.95
175,000		5.475 \$ 9,581.81	6.346	\$11,106.19	7.317	\$ 12,804.79
180,000		5.460 \$ 9,827.24	6.328	\$11,390.67	7.296	\$ 13,132.77
185,000		5.444 \$ 10,072.06	6.311	\$11,674.43	7.276	\$ 13,459.93
190,000		5.430 \$ 10,316.28	6.261	\$12,521.65	7.218	\$ 14,436.73
205,000		5.388 \$ 11,045.52	6.245	\$12,802.77	7.200	\$ 14,760.84
210,000		5.375 \$ 11,287.53	6.230	\$13,083.28	7.183	\$ 15,084.25
215,000		5.362 \$ 11,529.03	6.215	\$13,363.19	7.166	\$ 15,406.97
220,000		5.350 \$ 11,770.02	6.201	\$13,642.52	7.150	\$ 15,729.03
225,000		5.338 \$ 12,010.53	6.187	\$13,921.29	7.134	\$ 16,050.43
230,000		5.326 \$ 12,250.56	6.174	\$14,199.51	7.118	\$ 16,371.20

SIMPLISTIC PROJECT			AVERAGE PROJECT		COMPLEX PROJECT	
ECCA	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$
235,000	5.315	\$ 12,490.13	6.161	\$14,477.19	7.103	\$ 16,691.35
240,000	5.304	\$ 12,729.25	6.148	\$14,754.36	7.088	\$ 17,010.91
245,000	5.293	\$ 12,967.93	6.135	\$15,031.01	7.073	\$ 17,329.87
250,000	5.282	\$ 13,206.18	6.123	\$15,307.17	7.059	\$ 17,648.26
255,000	5.272	\$ 13,444.02	6.111	\$15,582.84	7.046	\$ 17,966.10
260,000	5.262	\$ 13,681.44	6.099	\$15,858.03	7.032	\$ 18,283.38
270,000	5.243	\$ 14,155.10	6.077	\$16,407.05	7.006	\$ 18,916.36
280,000	5.224	\$ 14,627.23	6.055	\$16,954.29	6.981	\$ 19,547.30
290,000	5.206	\$ 15,097.89	6.034	\$17,499.83	6.957	\$ 20,176.27
300,000	5.189	\$ 15,567.15	6.015	\$18,043.74	6.934	\$ 20,803.37
310,000	5.173	\$ 16,035.05	5.996	\$18,586.08	6.912	\$ 21,428.65
320,000	5.157	\$ 16,501.65	5.977	\$19,126.91	6.891	\$ 22,052.20
330,000	5.142	\$ 16,966.99	5.959	\$19,666.29	6.871	\$ 22,674.07
340,000	5.127	\$ 17,431.13	5.942	\$20,204.26	6.851	\$ 23,294.33
350,000	5.113	\$ 17,894.10	5.926	\$20,740.89	6.832	\$ 23,913.02
360,000	5.099	\$ 18,355.94	5.910	\$21,276.20	6.814	\$ 24,530.21
370,000	5.086	\$ 18,816.68	5.895	\$21,810.25	6.769	\$ 25,145.98
380,000	5.073	\$ 19,276.37	5.880	\$22,343.06	6.779	\$ 25,760.24
390,000	5.060	\$ 19,735.03	5.865	\$22,874.69	6.762	\$ 26,373.18
400,000	5.048	\$ 20,192.70	5.851	\$23,405.17	6.746	\$ 26,984.79
410,000	5.036	\$ 20,649.40	5.838	\$23,934.53	6.731	\$ 27,595.10
420,000	5.025	\$ 21,105.16	5.824	\$24,462.80	6.715	\$ 28,204.18
430,000	5.014	\$ 21,560.00	5.812	\$24,990.01	6.700	\$ 28,812.01
440,000	5.008	\$ 22,013.96	5.799	\$25,516.91	6.686	\$ 29,418.66
450,000	4.993	\$ 22,467.06	5.787	\$26,041.36	6.672	\$ 30,024.16
460,000	4.982	\$ 22,919.31	5.775	\$26,565.57	6.658	\$ 30,628.53
470,000	4.972	\$ 23,370.74	5.764	\$27,088.82	6.645	\$ 31,231.81
480,000	4.963	\$ 23,821.37	5.752	\$27,611.14	6.632	\$ 31,854.02
490,000	4.953	\$ 24,271.22	5.741	\$28,132.56	6.619	\$ 32,435.18
500,000	4.944	\$ 24,720.31	5.731	\$28,653.09	6.607	\$ 33,035.32
505,000	4.940	\$ 24,944.57	5.725	\$28,913.03	6.601	\$ 33,335.02
510,000	4.935	\$ 25,168.65	5.720	\$29,172.76	6.595	\$ 33,634.47
515,000	4.931	\$ 25,392.55	5.715	\$29,432.27	6.589	\$ 33,933.68
520,000	4.926	\$ 25,616.27	5.710	\$29,691.58	6.583	\$ 34,232.65
525,000	4.922	\$ 25,839.81	5.705	\$29,950.68	6.577	\$ 34,531.38
530,000	4.918	\$ 26,063.17	5.700	\$30,209.58	6.572	\$ 34,829.87
535,000	4.913	\$ 26,286.36	5.695	\$30,468.28	6.566	\$ 35,128.13
540,000	4.909	\$ 26,509.37	5.690	\$30,726.78	6.560	\$ 35,426.16
545,000	4.905	\$ 26,732.22	5.685	\$30,985.07	6.555	\$ 35,723.97
550,000	4.901	\$ 26,954.90	5.681	\$31,243.18	6.549	\$ 36,021.55
555,000	4.897	\$ 27,177.41	5.676	\$31,501.09	6.544	\$ 36,318.90
560,000	4.893	\$ 27,399.76	5.671	\$31,758.81	6.539	\$ 36,616.04
565,000	4.889	\$ 27,621.94	5.667	\$32,016.34	6.533	\$ 36,912.96
570,000	4.885	\$ 27,843.96	5.662	\$32,273.68	6.528	\$ 37,209.66
575,000	4.881	\$ 28,065.82	5.658	\$32,530.84	6.523	\$ 37,506.15

	SIMPLISTIC PROJECT		AVERAGE PROJECT		COMPLEX PROJECT	
	ECCA	TOTAL FEE % FEE IN \$	TOTAL FEE % FEE IN \$		TOTAL FEE % FEE IN \$	
580,000	4.877	\$ 28,287.53	5.653	\$32,787.82	6.518	\$ 37,802.42
585,000	4.873	\$ 28,509.07	5.649	\$33,044.61	6.513	\$ 38,098.49
590,000	4.870	\$ 28,730.47	5.644	\$33,301.22	6.508	\$ 38,394.35
595,000	4.866	\$ 28,951.70	5.640	\$33,557.66	6.503	\$ 38,690.00
600,000	4.862	\$ 29,172.79	5.636	\$33,813.91	6.498	\$ 38,985.45
605,000	4.858	\$ 29,393.72	5.631	\$34,070.00	6.493	\$ 39,280.70
610,000	4.855	\$ 29,614.51	5.627	\$34,325.91	6.488	\$ 39,575.75
615,000	4.851	\$ 29,835.15	5.623	\$34,581.65	6.483	\$ 39,870.61
620,000	4.848	\$ 30,055.64	5.619	\$34,837.22	6.478	\$ 40,165.26
625,000	4.844	\$ 30,275.99	5.619	\$35,092.62	6.474	\$ 40,459.73
630,000	4.841	\$ 30,496.19	5.611	\$35,347.86	6.469	\$ 40,754.00
635,000	4.837	\$ 30,716.25	5.607	\$35,602.93	6.464	\$ 41,048.08
640,000	4.834	\$ 30,936.17	5.603	\$35,857.83	6.460	\$ 41,341.97
645,000	4.830	\$ 31,155.95	5.599	\$36,112.58	6.455	\$ 41,635.68
650,000	4.827	\$ 31,375.59	5.595	\$36,367.16	6.451	\$ 41,929.20
655,000	4.824	\$ 31,595.09	5.591	\$36,621.59	6.446	\$ 42,222.54
660,000	4.820	\$ 31,814.46	5.587	\$36,875.85	6.442	\$ 42,515.69
665,000	4.817	\$ 32,033.70	5.583	\$37,129.97	6.437	\$ 42,808.67
670,000	4.814	\$ 32,252.79	5.580	\$37,383.92	6.433	\$ 43,101.48
675,000	4.811	\$ 32,471.76	5.576	\$37,637.72	6.429	\$ 43,394.08
680,000	4.807	\$ 32,690.60	5.572	\$37,891.37	6.424	\$ 43,686.52
685,000	4.804	\$ 32,909.30	5.569	\$38,144.87	6.420	\$ 43,978.79
690,000	4.801	\$ 33,127.88	5.565	\$38,398.22	6.416	\$ 44,270.89
695,000	4.798	\$ 33,346.33	5.561	\$38,651.42	6.412	\$ 44,562.82
700,000	4.795	\$ 33,564.65	5.551	\$39,410.15	6.400	\$ 45,437.58
715,000	4.786	\$ 34,218.86	5.547	\$39,662.77	6.396	\$ 45,728.83
720,000	4.783	\$ 34,436.68	5.544	\$39,915.24	6.392	\$ 46,019.93
725,000	4.780	\$ 34,654.38	5.540	\$40,167.58	6.388	\$ 46,310.85
730,000	4.777	\$ 34,871.96	5.537	\$40,419.77	6.384	\$ 46,601.62
735,000	4.774	\$ 35,089.42	5.534	\$40,671.83	6.380	\$ 46,892.22
740,000	4.771	\$ 35,306.76	5.530	\$40,923.75	6.376	\$ 47,182.67
745,000	4.768	\$ 35,523.98	5.527	\$41,175.53	6.372	\$ 47,472.96
750,000	4.765	\$ 35,741.09	5.524	\$41,427.17	6.368	\$ 47,763.09
755,000	4.760	\$ 35,985.08	5.520	\$41,678.68	6.360	\$ 48,053.07
760,000	4.760	\$ 36,174.95	5.520	\$41,930.06	6.360	\$ 48,342.89
765,000	4.760	\$ 36,391.71	5.510	\$42,181.30	6.360	\$ 48,632.56
770,000	4.750	\$ 36,608.36	5.510	\$42,432.41	6.350	\$ 48,922.08
775,000	4.750	\$ 36,824.89	5.510	\$42,683.40	6.350	\$ 49,211.44
780,000	4.750	\$ 37,041.31	5.550	\$42,934.25	6.350	\$ 49,500.66
785,000	4.750	\$ 37,257.62	5.550	\$43,184.97	6.340	\$ 49,789.73
790,000	4.740	\$ 37,473.82	5.550	\$43,435.57	6.340	\$ 50,078.65
795,000	4.740	\$ 37,689.91	5.550	\$43,686.03	6.340	\$ 50,367.43
800,000	4.740	\$ 37,905.89	5.490	\$43,936.37	6.330	\$ 50,656.06
805,000	4.740	\$ 38,121.77	5.490	\$44,186.59	6.330	\$ 50,944.54
810,000	4.730	\$ 38,337.53	5.490	\$44,436.68	6.330	\$ 51,232.88

SIMPLISTIC PROJECT			AVERAGE PROJECT		COMPLEX PROJECT	
ECCA	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$
815,000	4.730	\$ 38,553.19	5.480	\$44,686.65	6.320	\$ 51,521.08
820,000	4.730	\$ 38,768.75	5.480	\$44,936.50	6.320	\$ 51,809.14
825,000	4.730	\$ 38,984.20	5.480	\$45,186.23	6.310	\$ 52,097.06
830,000	4.720	\$ 39,199.54	5.470	\$45,435.83	6.310	\$ 52,384.84
835,000	4.720	\$ 39,414.78	5.470	\$45,685.32	6.310	\$ 52,672.48
840,000	4.720	\$ 39,629.92	5.470	\$45,934.68	6.300	\$ 52,959.99
845,000	4.720	\$ 39,844.96	5.470	\$46,183.93	6.300	\$ 53,247.35
850,000	4.710	\$ 40,059.89	5.460	\$46,433.06	6.300	\$ 53,534.59
855,000	4.710	\$ 40,274.73	5.460	\$46,682.07	6.290	\$ 53,821.68
860,000	4.710	\$ 40,489.46	5.460	\$46,930.97	6.290	\$ 54,108.65
865,000	4.710	\$ 40,704.10	5.450	\$47,179.75	6.290	\$ 54,395.48
870,000	4.700	\$ 40,918.64	5.450	\$47,428.42	6.290	\$ 54,682.18
875,000	4.700	\$ 41,133.08	5.450	\$47,676.98	6.280	\$ 54,968.75
880,000	4.700	\$ 41,347.42	5.450	\$47,925.42	6.280	\$ 55,255.19
885,000	4.700	\$ 41,561.67	5.440	\$48,173.75	6.280	\$ 55,541.50
890,000	4.690	\$ 41,775.81	5.440	\$48,421.97	6.270	\$ 55,827.68
900,000	4.690	\$ 42,203.83	5.440	\$48,918.07	6.270	\$ 56,399.66
905,000	4.690	\$ 42,417.69	5.430	\$49,165.96	6.260	\$ 56,685.46
910,000	4.680	\$ 42,631.47	5.430	\$49,413.74	6.260	\$ 56,971.14
915,000	4.680	\$ 42,845.14	5.430	\$49,661.42	6.260	\$ 57,256.69
920,000	4.680	\$ 43,058.73	5.420	\$49,908.98	6.250	\$ 57,542.12
925,000	4.680	\$ 43,272.22	5.420	\$50,156.44	6.250	\$ 57,827.43
930,000	4.680	\$ 43,485.63	5.420	\$50,403.80	6.250	\$ 58,112.61
935,000	4.670	\$ 43,698.94	5.420	\$50,651.04	6.250	\$ 58,397.67
940,000	4.670	\$ 43,912.16	5.410	\$50,898.19	6.240	\$ 58,682.62
945,000	4.670	\$ 44,125.30	5.410	\$51,145.23	6.240	\$ 58,967.44
950,000	4.670	\$ 44,338.34	5.410	\$51,392.17	6.240	\$ 59,252.14
955,000	4.670	\$ 44,551.30	5.410	\$51,639.00	6.230	\$ 59,536.73
960,000	4.660	\$ 44,764.16	5.440	\$51,885.73	6.230	\$ 59,821.20
965,000	4.660	\$ 44,976.94	5.440	\$52,132.37	6.230	\$ 60,105.55
970,000	4.660	\$ 45,189.64	5.440	\$52,378.90	6.230	\$ 60,389.79
975,000	4.660	\$ 45,402.24	5.440	\$52,625.33	6.220	\$ 60,673.91
980,000	4.650	\$ 45,614.76	5.440	\$52,871.66	6.220	\$ 60,957.91
985,000	4.650	\$ 45,827.20	5.390	\$53,117.89	6.220	\$ 61,241.80
990,000	4.650	\$ 46,039.55	5.390	\$53,364.02	6.210	\$ 61,525.58
995,000	4.650	\$ 46,251.82	5.390	\$53,610.06	6.210	\$ 61,809.25
1,000,000	4.650	\$ 46,464.00	5.390	\$53,856.00	6.210	\$ 62,092.80
1,005,000	4.640	\$ 46,676.10	5.380	\$54,101.84	6.210	\$ 62,376.24
1,010,000	4.640	\$ 46,888.12	5.380	\$54,347.59	6.200	\$ 62,659.57
1,015,000	4.640	\$ 47,100.05	5.380	\$54,593.24	6.200	\$ 62,942.79
1,020,000	4.640	\$ 47,311.90	5.380	\$54,838.80	6.200	\$ 63,225.91
1,025,000	4.640	\$ 47,523.67	5.370	\$55,084.26	6.200	\$ 63,508.91
1,030,000	4.630	\$ 47,735.36	5.370	\$55,329.62	6.190	\$ 63,791.80
1,035,000	4.630	\$ 47,946.97	5.370	\$55,574.90	6.190	\$ 64,074.59
1,040,000	4.630	\$ 48,158.50	5.370	\$55,820.08	6.190	\$ 64,357.27

ECCA	SIMPLISTIC PROJECT		AVERAGE PROJECT		COMPLEX PROJECT	
	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$
1,045,000	4.630	\$ 48,369.95	5.370	\$56,065.17	6.190	\$ 64,639.84
1,050,000	4.630	\$ 48,581.32	5.360	\$56,310.17	6.180	\$ 64,922.31
1,055,000	4.620	\$ 48,792.61	5.360	\$56,555.07	6.180	\$ 65,204.67
1,060,000	4.620	\$ 49,003.82	5.360	\$56,799.89	6.180	\$ 65,486.93
1,065,000	4.620	\$ 49,214.96	5.360	\$57,044.61	6.180	\$ 65,769.08
1,070,000	4.620	\$ 49,426.02	5.350	\$57,289.25	6.170	\$ 66,051.13
1,075,000	4.620	\$ 49,637.00	5.350	\$57,533.79	6.170	\$ 66,333.08
1,080,000	4.620	\$ 49,847.90	5.350	\$57,778.25	6.170	\$ 66,614.92
1,085,000	4.610	\$ 50,058.73	5.350	\$58,022.61	6.170	\$ 66,896.66
1,090,000	4.610	\$ 50,269.48	5.350	\$58,266.89	6.160	\$ 67,178.30
1,095,000	4.610	\$ 50,480.15	5.340	\$58,511.09	6.160	\$ 67,459.84
1,100,000	4.610	\$ 50,690.75	5.340	\$58,755.19	6.160	\$ 67,741.28
1,105,000	4.610	\$ 50,901.28	5.340	\$58,999.21	6.160	\$ 68,022.62
1,110,000	4.600	\$ 51,111.73	5.340	\$59,243.14	6.150	\$ 68,303.86
1,115,000	4.600	\$ 51,322.11	5.340	\$59,486.99	6.150	\$ 68,585.00
1,120,000	4.600	\$ 51,532.42	5.330	\$59,730.75	6.150	\$ 68,866.05
1,125,000	4.600	\$ 51,742.65	5.330	\$59,974.43	6.150	\$ 69,146.99
1,130,000	4.600	\$ 51,952.81	5.330	\$60,218.02	6.140	\$ 69,427.84
1,135,000	4.600	\$ 52,162.89	5.330	\$60,461.53	6.140	\$ 69,708.59
1,140,000	4.590	\$ 52,372.91	5.320	\$60,704.96	6.140	\$ 69,989.25
1,145,000	4.590	\$ 52,582.85	5.320	\$60,948.30	6.140	\$ 70,269.81
1,150,000	4.590	\$ 52,792.72	5.320	\$61,191.56	6.130	\$ 70,550.27
1,155,000	4.590	\$ 53,002.52	5.320	\$61,434.74	6.130	\$ 70,830.64
1,160,000	4.590	\$ 53,212.25	5.320	\$61,677.83	6.130	\$ 71,110.91
1,165,000	4.590	\$ 53,421.91	5.320	\$61,920.85	6.130	\$ 71,391.10
1,170,000	4.580	\$ 53,631.50	5.310	\$62,163.78	6.130	\$ 71,671.18
1,175,000	4.580	\$ 53,841.02	5.310	\$62,406.63	6.120	\$ 71,951.18
1,180,000	4.580	\$ 54,050.47	5.310	\$62,469.41	6.120	\$ 72,231.08
1,185,000	4.580	\$ 54,259.85	5.310	\$62,892.10	6.120	\$ 72,510.89
1,190,000	4.580	\$ 54,469.16	5.310	\$63,134.71	6.120	\$ 72,790.61
1,195,000	4.580	\$ 54,678.41	5.330	\$63,377.25	6.110	\$ 73,070.24
1,200,000	4.570	\$ 54,887.59	5.330	\$63,619.70	6.110	\$ 73,349.77
1,205,000	4.570	\$ 55,096.70	5.330	\$63,862.08	6.110	\$ 73,629.22
1,210,000	4.570	\$ 55,305.74	5.330	\$64,104.38	6.110	\$ 73,908.58
1,215,000	4.570	\$ 55,514.71	5.330	\$64,346.60	6.110	\$ 74,187.85
1,220,000	4.570	\$ 55,723.62	5.290	\$64,588.75	6.100	\$ 74,467.02
1,225,000	4.570	\$ 55,932.47	5.290	\$64,830.81	6.100	\$ 74,746.11
1,230,000	4.560	\$ 56,141.24	5.290	\$65,072.80	6.100	\$ 75,025.12
1,235,000	4.560	\$ 56,349.95	5.290	\$65,314.72	6.100	\$ 75,304.03
1,240,000	4.560	\$ 56,558.60	5.290	\$65,556.56	6.100	\$ 75,582.86
1,245,000	4.560	\$ 56,767.18	5.290	\$65,798.32	6.090	\$ 75,861.60
1,250,000	4.560	\$ 56,975.70	5.280	\$66,040.01	6.090	\$ 76,140.25
1,255,000	4.560	\$ 57,184.15	5.280	\$66,281.63	6.090	\$ 76,418.82
1,260,000	4.550	\$ 57,392.54	5.280	\$66,523.17	6.090	\$ 76,697.30
1,265,000	4.550	\$ 57,600.86	5.280	\$66,764.63	6.090	\$ 76,975.69

SIMPLISTIC PROJECT			AVERAGE PROJECT		COMPLEX PROJECT	
ECCA	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$
1,270,000	4.550	\$ 57,809.12	5.280	\$67,006.03	6.080	\$ 77,254.01
1,275,000	4.550	\$ 58,017.32	5.270	\$67,247.34	6.080	\$ 77,532.23
1,280,000	4.550	\$ 58,225.45	5.270	\$67,488.59	6.080	\$ 77,810.37
1,285,000	4.550	\$ 58,433.52	5.270	\$67,729.76	6.080	\$ 78,088.43
1,290,000	4.550	\$ 58,641.53	5.270	\$67,970.86	6.070	\$ 78,366.41
1,295,000	4.540	\$ 58,849.48	5.270	\$68,211.89	6.070	\$ 78,644.30
1,300,000	4.540	\$ 59,057.36	5.270	\$68,452.85	6.070	\$ 78,922.11
1,305,000	4.540	\$ 59,265.18	5.260	\$68,693.74	6.070	\$ 79,199.84
1,310,000	4.540	\$ 59,472.95	5.260	\$68,934.55	6.070	\$ 79,477.48
1,315,000	4.540	\$ 59,680.65	5.260	\$69,175.30	6.070	\$ 79,755.05
1,320,000	4.540	\$ 59,888.29	5.260	\$69,415.97	6.060	\$ 80,032.53
1,325,000	4.540	\$ 60,095.87	5.260	\$69,656.57	6.060	\$ 80,309.93
1,330,000	4.530	\$ 60,303.39	5.260	\$69,897.11	6.060	\$ 80,587.25
1,335,000	4.530	\$ 60,510.84	5.250	\$70,137.57	6.060	\$ 80,864.49
1,340,000	4.530	\$ 60,718.24	5.250	\$70,377.96	6.060	\$ 81,141.65
1,345,000	4.530	\$ 60,925.58	5.250	\$70,618.29	6.050	\$ 81,418.73
1,350,000	4.530	\$ 61,132.86	5.250	\$70,858.55	6.050	\$ 81,695.74
1,355,000	4.530	\$ 61,340.09	5.250	\$71,098.74	6.050	\$ 81,972.66
1,360,000	4.530	\$ 61,547.25	5.250	\$71,338.86	6.050	\$ 82,249.51
1,365,000	4.520	\$ 61,754.35	5.240	\$71,578.91	6.050	\$ 82,526.27
1,370,000	4.520	\$ 61,961.40	5.240	\$71,818.90	6.040	\$ 82,802.96
1,375,000	4.520	\$ 62,168.39	5.240	\$72,058.81	6.040	\$ 83,079.57
1,380,000	4.520	\$ 62,375.32	5.240	\$72,298.67	6.040	\$ 83,356.11
1,385,000	4.520	\$ 62,582.19	5.240	\$72,538.45	6.040	\$ 83,632.57
1,390,000	4.520	\$ 62,789.01	5.240	\$72,778.17	6.040	\$ 83,908.95
1,395,000	4.520	\$ 62,995.77	5.230	\$73,017.82	6.030	\$ 84,185.25
1,400,000	4.510	\$ 63,202.47	5.230	\$73,257.41	6.030	\$ 84,461.48
1,405,000	4.510	\$ 63,409.11	5.230	\$73,496.93	6.030	\$ 84,737.64
1,410,000	4.510	\$ 63,615.70	5.230	\$73,736.38	6.030	\$ 85,013.71
1,415,000	4.510	\$ 63,822.24	5.230	\$73,975.78	6.030	\$ 85,289.72
1,420,000	4.510	\$ 64,028.71	5.230	\$74,215.10	6.030	\$ 85,565.65
1,425,000	4.510	\$ 64,235.14	5.220	\$74,454.36	6.020	\$ 85,841.50
1,430,000	4.510	\$ 64,441.50	5.220	\$74,693.56	6.020	\$ 86,117.28
1,435,000	4.510	\$ 64,647.81	5.220	\$74,932.69	6.020	\$ 86,392.99
1,440,000	4.500	\$ 64,854.07	5.220	\$75,171.76	6.020	\$ 86,668.62
1,445,000	4.500	\$ 65,060.27	5.220	\$75,410.77	6.020	\$ 86,944.18
1,450,000	4.500	\$ 65,266.42	5.220	\$75,649.71	6.010	\$ 87,219.67
1,455,000	4.500	\$ 65,472.51	5.220	\$75,888.59	6.010	\$ 87,495.08
1,460,000	4.500	\$ 65,678.55	5.210	\$76,127.41	6.010	\$ 87,770.42
1,465,000	4.500	\$ 65,884.53	5.210	\$76,366.16	6.010	\$ 88,045.69
1,470,000	4.500	\$ 66,090.46	5.210	\$76,604.86	6.010	\$ 88,320.89
1,480,000	4.490	\$ 66,502.17	5.210	\$77,082.06	6.000	\$ 88,871.08
1,485,000	4.490	\$ 66,707.94	5.210	\$77,320.56	6.000	\$ 89,146.06
1,490,000	4.490	\$ 66,913.65	5.210	\$77,559.01	6.000	\$ 89,420.98
1,495,000	4.490	\$ 67,119.32	5.200	\$77,797.39	6.000	\$ 89,695.82

ECCA	SIMPLISTIC PROJECT		AVERAGE PROJECT		COMPLEX PROJECT	
	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$	TOTAL FEE %	FEE IN \$
1,500,000	4.490	\$ 67,324.93	5.200	\$78,035.72	6.000	\$ 89,970.59
1,525,000	4.480	\$ 68,352.22	5.200	\$79,226.44	5.990	\$ 91,343.42
1,550,000	4.480	\$ 69,378.22	5.190	\$80,415.67	5.980	\$ 92,714.54
1,575,000	4.470	\$ 70,402.97	5.180	\$81,603.45	5.970	\$ 94,083.97
1,600,000	4.460	\$ 71,426.49	5.170	\$82,789.79	5.960	\$ 95,451.76
1,625,000	4.460	\$ 72,448.79	5.170	\$83,974.73	5.950	\$ 96,817.92
1,650,000	4.450	\$ 73,469.90	5.160	\$85,158.29	5.940	\$ 98,182.50
1,675,000	4.450	\$ 74,489.83	5.150	\$86,340.49	5.940	\$ 99,545.51
1,700,000	4.440	\$ 75,508.62	5.150	\$87,521.36	5.930	\$ 100,906.98
1,725,000	4.440	\$ 76,526.28	5.140	\$88,700.92	5.920	\$ 102,266.94
1,750,000	4.430	\$ 77,542.83	5.140	\$89,879.19	5.910	\$ 103,625.42
1,775,000	4.430	\$ 78,558.28	5.130	\$91,056.19	5.910	\$ 104,982.43
1,800,000	4.420	\$ 79,572.66	5.120	\$92,231.94	5.910	\$ 106,338.01
1,825,000	4.420	\$ 80,585.98	5.120	\$93,406.47	5.900	\$ 107,692.17
1,850,000	4.410	\$ 81,598.25	5.110	\$94,579.79	5.890	\$ 109,044.94
1,875,000	4.410	\$ 82,609.50	5.110	\$95,751.92	5.890	\$ 110,396.33
1,900,000	4.400	\$ 83,619.74	5.100	\$96,922.88	5.880	\$ 111,746.38
1,925,000	4.400	\$ 84,628.98	5.100	\$98,092.69	5.880	\$ 113,095.10
1,950,000	4.390	\$ 85,637.25	5.090	\$99,261.35	5.870	\$ 114,442.50
1,975,000	4.390	\$ 86,644.54	5.090	\$100,428.90	5.860	\$ 115,788.62
2,000,000	4.380	\$ 87,650.89	5.080	\$101,595.35	5.860	\$ 117,133.46

Appendix B – Direct Salary Rates

Fees for Contract Services

- a. If Appendix A, Supplemental Architect-Engineer Contract Lookup Table is included in the contract, the fee for Work Orders on projects with an estimated construction cost (ECCA) of up to \$750,000 shall be determined by Appendix A, subject to an additional fee for services not included in the Supplemental Architect-Engineer Contract Lookup Table as provided in the Ordering clause of the contract.
- b. For negotiated fees for Work Orders on projects with an estimated construction cost (ECCA) in excess of \$750,000 and for additional services not included in the Supplemental Architect-Engineer Contract Lookup Table, as provided in the Ordering clause of the contract, the following rates will apply (for the A/E and all Subcontractors):

*Please tailor the disciplines according to the specifics of the firm.

(1)

Total Overhead Rate: _____

Profit: _____

Direct Salary Rates:

Principal	_____
Project Manager	_____
Architect	_____
Draftsperson	_____
Technical Assistant	_____
Project Coordinator	_____
Project Engineer	_____
Technology Engineer	_____
Electrical Engineer	_____
Mechanical Engineer	_____
Structural Engineer	_____
Construction Inspector	_____
Designer	_____
CADD Operator	_____
Clerical	_____

(2) Consultant(s): _____

Total Overhead Rate: _____

Profit: _____

Direct Salary Rates:

Principal _____

Project Manager _____

Architect _____

Draftsperson _____

Technical Assistant _____

Project Coordinator _____

Project Engineer _____

Technology Engineer _____

Electrical Engineer _____

Mechanical Engineer _____

Structural Engineer _____

Construction Inspector _____

Designer _____

CADD Operator _____

Clerical _____

Instructions for Submitting Certificates of Insurance and Certificate--

INSTRUCTIONS FOR SUBMITTING CERTIFICATES OF INSURANCE

Contract No.: GS05P08GBD0017

Project Control No.: _____

Description: Indefinite Delivery Indefinite Quantity, Architect and Engineering (A/E) Services

Location: States of Illinois, Indiana, Ohio, Michigan, Minnesota and Wisconsin

Contractor/Subcontractor Name: _____

Address and Telephone Number: _____

Following award of the contract and as a condition of the issuance of notice to proceed, the contractor must furnish a Certificate of Insurance executed by the insurance provider. The contractor is to convey the enclosed Certificate of Insurance to the insurance provider for execution. A Certificate of Insurance may be submitted in any format provided that the certificate addresses all of the items indicated on the enclosed certificate, subject to the specific insurance requirements stated in the contract documents.

The insurance coverages obtained must satisfy the requirements of the cited contract--in terms of the amounts and types of insurance provided. (For coverages and provisions required, see FAR 52.228-5, INSURANCE--WORK ON A GOVERNMENT INSTALLATION, and GSAR 552.228-75--WORKMEN'S COMPENSATION LAWS, and the paragraphs on insurance in Section 00800 of the Invitation for Bids/Request for Proposal.

Particular requirements include:

1. The policy or policies of insurance must stipulate that the Government is to be notified 30 days prior to any cancellation of the policy or any material change adversely affecting the Government's interest. (See FAR 52.228-5--INSURANCE--WORK ON A GOVERNMENT INSTALLATION).
2. For contracts involving the abatement of asbestos, polychlorinated biphenyls (PCB's), and/or other hazardous materials, or contracts which are likely to involve the handling of such materials: If the contract insurance requirements stipulate, coverage for liabilities for bodily injury arising out of such work under this contract must be provided with limits no less than those specified for general liability insurance. Coverage for property damage associated with the hazardous materials will be required if it is specified in the contract documents.

CERTIFICATE OF INSURANCE

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CERTIFICATE OF INSURANCE							
NAME OF COMPANY INSURED:							
CONTRACT NUMBER: GS-05P-08-GB-C-0016							
Companies Affording Coverage	Type of Insurance	Policy No.	Policy Effective Date	Policy Expiration Date	Liability Limits (000's)		
					Each Aggregate Occurrence		
	General Liability				Bod. Inj.		
					Prop. Dam.		
					BI/PD Comb.		
					Pers. Inj.		
	Hazardous Mat. Liab. (if req.-see specs)				Bod. Inj.		
					Prop. Dam.		
	Automobile Liability				Bod. Inj.		Per Person
					Bod. Inj.		Per Accident
					Prop. Dam.		
					BI/PD Comb.		
	Excess Liability				BI/PD Comb.		
	Workmen's Comp. & Employer's Liability					Statutory	
						Ea. Accident	
						Disease-PL	
						Disease-Ea. Employee	
	Other Coverage (if required)						
ADDITIONAL PROVISIONS: The policy or policies of insurance require that the Government be notified in writing 30 days prior to any cancellation of the policy or policies above or any material change adversely affecting the Government's interest. (See FAR 52.228-5)							
CERTIFICATE HOLDER: (list address of contracting activity)							
Authorized Representative:							
Signature:							
Date:							

**SMALL BUSINESS, VETERAN OWNED SMALL BUSINESS, SERVICE-DISABLED
VETERAN OWNED SMALL BUSINESS, HUBZONE, SMALL
BUSINESS, SMALL DISADVANTAGED BUSINESS, AND SMALL WOMAN-OWNED
BUSINESS CONCERNS SUBCONTRACTING PLAN**

Date: _____

Solicitation/Contract Number: GS05P08GBD0017

Contractor Name and Address:

Contract Service: A/E Services

Project Description: Indefinite Delivery Indefinite Quantity, Architect and Engineering (A/E) Services for the States of Illinois, Indiana, Ohio, Michigan, Minnesota and Wisconsin

<p>Estimated Dollar Value: \$ _____</p> <p><i>Pertains to the requirements expressed in FAR 52.219-9.</i></p> <p>The total estimated value of all planned subcontracting (to all types of business concerns, including large businesses) under the base contract is:</p> <p>\$ _____</p>
GOALS

CATEGORY	VALUE	PERCENTAGE
Total of subcontracting (from above):	\$	100 %
Total planned for Small Business (SB), including Small Disadvantaged Business (SDB), Small Women-Owned Business (WOB), HUBZone Small Business, Veteran-Owned Business and Service-Disabled Veteran-Owned Small Business:*	\$	%
Total planned for Small Disadvantaged Business:*	\$	%
Total Planned for Small Woman-Owned Business:*	\$	%
Total Planned for HUBZone Small Business*	\$	%
Total Planned for Veteran-Owned Small Business*	\$	%
Total Planned for Service-Disabled Veteran-Owned Small Business*	\$	%

*Please note that 0% goals for SB, SDB, WOB & HZ, Veteran-Owned Small Business & Service-Disabled Veteran-Owned Small Business concerns are not acceptable.

- The following supplies and/or services will be subcontracted under this contract, and the distribution among (a) large, (b) small, (c) small disadvantaged business, (d) small woman-owned business, (e) HUBZone small business, (f) veteran-owned small business and (g) service-disabled veteran-owned small business is as follows:

CERTIFICATE OF INSURANCE

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(a) Supplies/services to be subcontracted to large businesses:

(b) Supplies/services to be subcontracted to small business (SB):

(c) Supplies/services to be subcontracted to small disadvantaged business (SDB):

(d) Supplies/services to be subcontracted to women-owned business (WOB):

(e) Supplies/services to be subcontracted HUBZone business (HZ):

(f) Supplies/services to be subcontracted to veteran-owned small business:

(g) Supplies/services to be subcontracted service-disabled veteran-owned small business:

CERTIFICATE OF INSURANCE

2. The following method was used in developing subcontracting goals in paragraph 1 above: Explain (1) how the product and service areas to be subcontracted were established; (2) how the areas to be subcontracted to SB, to SDB, WOB, HZ Veteran-owned Small Business and Service-Disabled Veteran-owned Small Business concerns were determined; and (3) how the capabilities to be subcontracted to SB, SDB, WOB, HZ, Veteran-owned Small Business, and Service Disabled Veteran-owned Small Business concerns were determined.

1.

2.

3.

3. The following methods were used to identify potential sources for solicitation purposes:
- (a) Existing Company source lists.
 - (b) The Procurement Automated Source Systems (PASS) of the Small Business Administration.
 - (c) The National Minority Purchasing Council Vendor Information Service.
 - (d) Minority Business Development Centers (funded by the Minority Business Development Agency, Department of Commerce.
 - (e) Trade associations affiliated with SDB's.
 - (f) Additions to (or deletions from) the above: (If deleting any potential sources set forth above, please provide explanation as an attachment to this plan.)

CERTIFICATE OF INSURANCE

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4. In establishing subcontracting goals indirect and overhead costs [] have or [] have not [check one] been included in the goals set forth above.

If "have been" is checked, explain the method used in determining the proportionate share of indirect costs to be incurred with SB, SDB, WOB, HZ, Veteran-owned Small Business and Service-disabled Veteran-owned Small Business concerns.

5. The following individual will administer the subcontracting program:

Name: _____

Title: _____

Phone: _____

Address: _____

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows:

General overall responsibility for review, monitoring and execution of this plan including but not limited to:

- (a) Developing and maintaining bidders lists of SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned concerns from all possible sources.
- (b) Ensuring that procurement packages are structured to permit SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned concerns to participate to the maximum extent possible.
- (c) Assuring inclusion of SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned concerns in all solicitations for products or services which they are capable of providing.
- (d) Reviewing solicitations to remove statements, clause, etc., which may tend to restrict or prohibit SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned Concerns from participating.
- (e) Ensuring periodic rotation of potential subcontractors by bidders lists.
- (f) Ensuring that the bid proposal review board documents its reasons for not selecting low bids submitted by SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned concerns.

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- (g) Ensuring the establishment and maintenance of records of solicitations and subcontract award activity.
- (h) Attending or arranging for attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.
- (i) Conducting or arranging for the presentation of motivational training for purchasing personnel pursuant to the intent of Public Law 95-507.
- (j) Monitoring attainment of proposed goals.
- (k) Preparing and submitting periodic subcontracting reports as required (i.e. SF-294 and SF-295).
- (l) Coordinating contractor's activities during the conduct of compliance reviews by Federal agencies.
- (m) Coordinating the conduct of contractor's activities involving its SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned subcontracting program.
- (n) Additions to (or deletions from) the duties specified above: (If deleting any duties set forth above, please provide explanation as an attachment to this plan.)

6. The following efforts will be taken to assure that SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned concerns will have an equitable opportunity to compete for subcontracts:

- (a) Outreach efforts will be made as follows:
 - (1) Contacts with minority and small business trade associations.
 - (2) Contacts with business development organizations.
 - (3) Attendance at small and minority business procurement conferences and trade fairs.
- (b) The following internal efforts will be made to guide and encourage buyers:
 - (1) Workshops, seminars and training programs will be conducted.
 - (2) Activities will be monitored to evaluate compliance with this subcontracting plan.
- (c) SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned source lists, guides and other data identifying SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned concerns will be maintained and utilized by buyers in soliciting subcontracts.
- (d) Additions to (or deletions from) the above listed efforts are as follows: (If deleting any efforts set forth above, please provide an explanation as an attachment to this plan.)

7. The offeror (contractor) agrees that the clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors (except SB concerns) who receive subcontracts in excess of \$500,000, (\$1 million for construction) to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of Public Law 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied.

CERTIFICATE OF INSURANCE

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The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies /services involved the availability of potential SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to subcontractor's facilities to review applicable records and subcontracting program progress.

8. The offeror (contractor) agrees to (1) cooperate in any studies or surveys as may be required, (2) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (3) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary subcontract Report, in accordance with the instruction on the forms, and (4) ensure that its subcontractors agree to submit SF's 294 and 295.
9. The offeror (contractor) agrees to maintain at least the following types of records to document compliance with this subcontracting plan (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):
 - (a) Source lists, guides, and other data that identify SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned concerns.
 - (b) Organizations contacted in an attempt to locate sources that are SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-owned Concerns.
 - (c) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (1) whether SB concerns were solicited and if not, why not; (2) whether SDB concerns were solicited and if not, why not; (3) whether WOB concerns were solicited and if not, why not; (4) whether HZ concerns were solicited and if not, why not; (5) whether Veteran-owned concerns were solicited and if not, why not; (6) whether Service-disabled Veteran-owned concerns were solicited and if not, why not and (7) if applicable, the reasons award was not made to a SB concern.
 - (d) Records of any outreach efforts to contact (1) trade associations, (2) business development organizations, and (3) conferences and trade fairs to locate SB, SDB, WOB, HZ, Veteran-owned and Service-disabled Veteran-Owned sources.
 - (e) Records of internal guidance and encouragement provided to buyers through (1) workshops, seminars, training, etc., and (2) monitoring performance to evaluate compliance with the program's requirements.
 - (f) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor.
 - (g) Records to be maintained in addition to the above are as follows:

Subcontracting Plan Submitted by: _____
(Must be signed by an officer of the firm) Signature Date

Type Name & Position: _____

Approved by: _____
Contracting Officer Date

CERTIFICATE OF INSURANCE

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ARCHITECT-ENGINEER COST ESTIMATE		CITY		STATE		COST OF PRICING DATA REFERENCE
		BUILDING		PROJECT NO.		
		DESIGN STAGE		COMPLETION IN WEEKS		
A. DIRECT SALARY COSTS						

SPECIALTIES PROJECT MANAGEMENT AND COORDINATION	JOB TITLES	MAN-HOURS	RATES \$	AMOUNTS \$	TOTALS
ARCHITECTURAL No. of Dwgs. ()					
STRUCTURAL No. of Dwgs. ()					
MECHANICAL No. of Dwgs. ()					
ELECTRICAL No. of Dwgs. ()					
SPECIFICATIONS No. of Dwgs. ()					
ESTIMATES					
OTHER					
TOTAL DRAWINGS		TOTAL MAN-HOURS	TOTAL SALARIES A		

B. CONSULTANTS (Attach estimate)		AMOUNTS \$
1		
2		
3		
4		
TOTAL SALARIES B		

C. OTHER DIRECT COSTS (Attach estimate as necessary)		AMOUNTS \$
1		
2		
3		
4		
TOTAL OTHER DIRECT COSTS C		

D. OVERHEAD POOLS		
TITLES	RATES %	ITEMS
1		
2		

ARCHITECT-ENGINEER FIRM NAME AND ADDRESS	E TOTAL COST TO ARCHITECT-ENGINEER		
	F PROFIT	% OF E	
	G TOTAL COST TO GOVERNMENT		
PREPARED BY (Signature and Title)	DATE	APPROVED BY (Signature and Title)	DATE

ARCHITECT-ENGINEER COST ESTIMATE SUMMARY					PAGE OF PAGES	
PROJECT					PROJECT NUMBER	
ELEMENTS		COST BY DESIGN STAGE				
		DESIGN CONCEPTS	TENTATIVES	WORKING DRAWINGS	POST-CONSTRUCTION CONTRACT SERVICES	OTHER <i>(State)</i>
DIRECT SALARY COSTS						
CONSULTANTS						
OTHER DIRECT COSTS						
OVERHEAD POOL TITLES						
TOTAL COST TO A-E						
PROFIT						
TOTAL COST TO GOVERNMENT						
TOTAL ESTIMATED DESIGN COST FOR PROJECT					\$	
REMARKS						

ARCHITECT-ENGINEER FIRM NAME AND ADDRESS <i>(Include ZIP code)</i>	TELEPHONE	
	AREA CODE	NUMBER
PREPARED BY <i>(Signature and title)</i>	DATE	
APPROVED BY <i>(Signature and title)</i>	DATE	

In accordance with FAR 15.406-2(a), offerors shall forward a completed Certificate of Current Cost and Pricing data along with submitted cost and pricing data.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's Representative in support of _____ * are accurate, complete and current as of _____ **. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm: _____

Signature _____

Name: _____

Title: _____

Date of execution:*** _____

*Identify the proposal, request for price adjustment or other submission involved, giving the appropriate identifying number (e.g. RFP No.)

** Insert the day, month and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties which is as close as practicable to the date of agreement on price.

*** Insert the day, month and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(END OF CERTIFICATE)